

No. 10190

United States  
Circuit Court of Appeals

For the Ninth Circuit.

Vol 2326

see Vol 2325

STERLING CARR, as Trustee in Bankruptcy  
of NIPPON YUSEN KABUSHIKI KAI-  
SYA, a Corporation, Bankrupt, and FIDEL-  
ITY AND DEPOSIT COMPANY OF MARY-  
LAND, a Corporation,

Appellants,

vs.

HERMOSA AMUSEMENT CORPORATION,  
LTD., a Corporation, and J. M. ANDERSEN,  
Appellees.

(And Fourteen Consolidated Appeals.)

Apostles on Appeal

In Three Volumes

FILED

VOLUME I

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Pages 1 to 476

PAUL P. O'BRIEN,

CLERK

Upon Appeals from the District Court of the United States  
for the Southern District of California,  
Central Division





United States Circuit Court of Appeals  
For the Ninth Circuit

STERLING CARR, as Trustee in Bankruptcy of NIPPON YUSEN  
KABUSHIKI KAISYA, a Corporation, Bankrupt, and FIDEL-  
ITY AND DEPOSIT COMPANY OF MARYLAND, a Corpo-  
ration,

Appellants,

vs.

HERMOSA AMUSEMENT CORPORATION, LTD., a Corporation,  
and J. M. ANDERSEN,

Appellees.

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(Title Continued on Succeeding Pages.)

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## INDEX

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	Page
Affidavit of James L. Adams in Support of Motion for Continuance of Trial.....	92
Amended Libel:	
In Intervention of Grace E. Mayo and Frank F. Mayo.....	151
Of Helen McGrath, etc.....	187
Of Hermosa Amusement Corp. Ltd., First	5
Amended Petition of Nippon Yusen Kabushiki Kaisya to Bring in Third Party Respondents under Admiralty Rule 56.....	55
Amendment to Amended Petition of Nippon Yusen Kabushiki Kaisya to Bring in Third Party Respondents .....	108
Answer of Hermosa Amusement Corp., Ltd., et al. to:	
Amended Petition to Bring in Third Party Respondents .....	75
First Amended Libel and Third Party Petition .....	234



	Index	Page
Answer of Hermosa (Continued):		
Intervening Libels .....		97
Cross-Libel of Nippon Yusen Kabushiki Kaisya .....		79
Answer of Nippon Yusen Kabushiki Kaisya to:		
Amended Libel of Grace E. Mayo and Frank F. Mayo.....		161
Amended Libel of Helen McGrath and In- terrogatories .....		204
First Amended Libel of Hermosa Amuse- ment Corp., Ltd.....		37
Libel of Hermosa Amusement Corp., Ltd., and Interrogatories .....		18
Answers to Interrogatories of Nippon Yusen Kabushiki Kaisya, Libelant's.....		72
Appeal:		
Assignment of Errors on Appeal of:		
George W. Berger.....		263
Hermosa Amusement Corp., Ltd., et al.		249
Bond for Costs on Appeal of:		
George W. Berger.....		270
Hermosa Amusement Corp., Ltd., et al.		257
Citations on .....		1, 3
Exhibits, Stipulation for Use of Photo- graphs on .....		1432

## Index

## Page

## Appeal (Continued):

## Order Allowing Appeal of:

George W. Berger..... 269

Hermosa Amusement Corp., Ltd., et al. 256

## Petition for Appeal of:

George W. Berger..... 261

Hermosa Amusement Corp., Ltd., et al. 248

## Statement of Points on Which Appellant

Intends to Rely on (CCA).....1428

## Stipulation Designating Parts of Record to

be Printed and Consolidating Appeals

(CCA) .....1415

## Stipulation and Order Designating Parts

of Record to be Certified and Contained

in Record on (DC)..... 273

## Stipulation Waiving Damage Questions,

etc., and Withdrawing Assignments with

Reference Thereto ..... 272

## Assignment of Errors on Appeal of:

George W. Berger..... 263

Hermosa Amusement Corp., Ltd., et al.... 249

## Attorneys:

Names and Addresses of..... 1

Substitution of ..... 54

## Bond for Costs on Appeal of:

George W. Berger..... 270

Hermosa Amusement Corp., Ltd., et al.... 257

Index	Page
Bond for Release of Vessel, Stipulation and...	15
Certificate of Clerk to Apostles on Appeal....	290
Citations on Appeal.....	1, 3
Claim of Nippon Yusen Kabushiki Kaisya....	14
Consolidating Appeals and Stipulation Designating Parts of Record to be Printed (CCA) .	1415
Cross-Libel of Nippon Yusen Kabushiki Kaisya	40
Decree and Judgment for Libelant, Hermosa Amusement Corp., Ltd., Final.....	145
Decree for Grace E. Mayo and Frank F. Mayo, Final .....	181
Decree for Helen McGrath, etc., Final.....	239
Designating Parts of Record to be Printed and Consolidating Appeals, Stipulation.....	1415
Exhibits, Stipulation for Use of Photographs on Appeal .....	1432
Final Decree and Judgment for Libelant, Hermosa Amusement Corp., Ltd.....	145
Final Decree for Grace E. Mayo and Frank F. Mayo .....	181
Final Decree for Helen McGrath, etc.....	239
First Amended Libel of Hermosa Amusement Corp., Ltd. ....	5
Hearing on Motion for Continuance of Trial, September 8, 1941, Reporter's Transcript...	300



Index	Page
Interrogatories, Answer of Nippon Yusen Kabushiki Kaisya to Libel of Hermosa Amusement Corp., Ltd., and.....	33
Interrogatories of Nippon Yusen Kabushiki Kaisya to Helen McGrath, etc.....	219
Judgment for Libelant, Hermosa Amusement Corp., Ltd., Final Decree and.....	145
Libel of:	
Grace E. Mayo and Frank F. Mayo, Amended .....	151
Helen McGrath, etc., Amended.....	187
Hermosa Amusement Corp., Ltd., First Amended .....	5
Libelant's Answers to Interrogatories of Nippon Yusen Kabushiki Kaisya.....	72
Minute Order Denying Motion for Continuance of Trial .....	109
Minute Order Denying Motion of Receiver in Bankruptcy to Intervene (DC).....	260
Minute Order Granting Motion of Sterling Carr, Trustee in Bankruptcy to Intervene and be Substituted as Party Appellant (CCA) ..	1430
Motion for Continuance of Trial.....	89
Motion of Receiver in Bankruptcy to Intervene, in Libel of:	
Grace E. Mayo and Frank F. Mayo.....	259
Hermosa Amusement Corp., Ltd., et al...	247

Index	Page
Names and Addresses of Attorneys.....	1
Notice of Motion for Continuance of Trial.....	89
Opinion of Court, dated October 31, 1941.....	112
Order Allowing Appeal of:	
George W. Berger.....	269
Hermosa Amusement Corp., Ltd., et al...	256
Order Denying Motion of Receiver in Bankruptcy to Intervene.....	260
Order Designating Parts of Record to be Certified and Contained in Record on Appeal (DC), Stipulation and.....	273
Order Granting Motion to Intervene and to be Substituted as Party Appellant.....	1431
Order Granting Receiver Leave to Intervene, in Libel of Hermosa Amusement Corp., Ltd., et al. ....	248
Petition for Appeal of:	
George W. Berger.....	261
Hermosa Amusement Corp., Ltd., et al...	248
Petition of Nippon Yusen Kabushiki Kaisya to Bring in Third Party Respondents under Admiralty Rule 56.....	220
Satisfaction of Final Decree for Grace E. Mayo and Frank F. Mayo.....	185

Index	Page
Satisfaction of Judgment and Final Decree for Helen McGrath, etc.....	245
Statement of Points on Which Appellant In- tends to Rely on Appeal (CCA).....	1428
Stipulation:	
And Bond for Release of Vessel.....	15
And Order Designating Parts of Record to be Certified and Contained in Record on Appeal .....	273
As to Reasonableness of Stipulated Decrees	140
Designating Parts of Record to be Printed and Consolidating Appeals.....	1415
For Use of Photographic Exhibits on Ap- peal .....	1432
Waiving Damage Questions, etc., on Ap- peal and Withdrawing Assignments with Reference Thereto .....	272
Substitution of Attorneys.....	54
Transcript, Reporter's, Hearing of Motion for Continuance of Trial, September 8, 1941....	300
Transcript of Testimony.....	340
Exhibits for Olympic:	
4—Drawings showing relative position of the three barges.....	359
7—Drawing from Deposition of Louis R. Ohiser .....	666

	Index	Page
Exhibits for Olympic (Continued):		
8—Diagram drawn by Witness Stiles.....		712
9—Letter from Commander Field to the Secretary of Commerce, dated March 24, 1941 .....		785
10—Letter dated July 9, 1940, to Com- mander Field, signed S. Laz Lans- burgh, attorney for Hermosa, and Captain J. M. Anderson.....		789
11—Notice by Supervising Inspector Fisher .....		793
12—Diagrams with use of Models showing positions of "Olympic" and "Sakito Maru" .....		1184
13—Original Scrap log.....		1186
set out at.....		829
14—Diagram used to illustrate Witness Sato's testimony .....		1257
15—Certificate of Inspection of the "Olym- pic II" for 1938.....		1341
16—Chart showing compass cross-bearings taken from "Cahoone" instruments and showing location of fishing barges.		1373
17—Drawing by Witness Alderson showing relative positions of "Olympic" and "Sakito Maru" near the time of im- pact .....		1385

## Index

## Page

## Exhibits for Olympic (Continued):

- 18—Chart with markings by Witness Crank  
showing position of Horseshoe Kelp  
and fishing barges.....1397

## Exhibits for Sakito:

- A—Copy of Consolidated Certificate of  
Enrollment License of the "Olympic"  
issued at San Francisco on April 11,  
1934 ..... 370

- B—Letter to Captain Anderson from U. S.  
Local Inspectors Stuart and Moody,  
dated June 3, 1940..... 390

- C—Sketch Made by Witness Smith..... 641

- D—Photostatic copy of Sketch Made by  
Witness Ohiser ..... 696

- E—Letter dated July 24, 1940, R. S. Field  
to S. L. Lansburgh of Hermosa Amuse-  
ment Co. .... 744

- F—Depositions of Messrs. Yokota, Kato  
and Shimada ..... 798

Kato, G.

—direct ..... 913

—cross ..... 930

—redirect ..... 942

—recross ..... 944

Shimada, S.

—direct ..... 945

—cross ..... 951



Index	Page
Sakito Exhibit F (Continued).	
Yokota, T.	
—direct .....	802
—cross .....	859
—redirect (Mr. Adams) ..	902, 908, 911
—recross (Mr. Black) .....	908
—recross (Mr. Eastham) .....	909, 912
Exhibits for Yokota:	
1—Chart of U. S. Geodetic Survey No. 5101 .....	815
set out at .....	1164
2—Photostatic copy of Ship's Bridge Memo "Sakito Maru" for September 4, 1940 .....	829
3—Photostatic Copy of Ship's Log Book "Sakito Maru" of September 4, 1940 .....	832
15—Photostatic copy of Gyro Compass Recorder Record "Sakito Maru" .....	856
Exhibits for Kato:	
1—Photostatic Copy of Page of Signal Book of "Sakito Maru" .....	923
2—Photostatic Copy of Page of Engine-room Log Book .....	926

## Index

## Page

## Exhibits for Sakito (Continued):

## G—Depositions of Lt. Hewins and Lt.

Bartlett ..... 961

## Bartlett, David H.

—direct ..... 1029

—cross (Mr. Bullard) ..... 1038

—cross (Mr. Collins) ..... 1039, 1040

—cross (Mr. Eastham) ..... 1040

## Hewins, Spencer F.

—direct ..... 962

—cross (Mr. Bullard) ..... 989, 1017

—cross (Mr. Collins) ..... 1006

—cross (Mr. Lippert) ..... 1007

—cross (Mr. Eastham) ..... 1010

—cross (Mr. Clough) ..... 1012

—cross (Mr. Briney) ..... 1015

—cross (Mr. Montgomery) ..... 1016

—redirect ..... 1019, 1025

—recross (Mr. Collins) ..... 1022

—recross (Mr. Bullard) ..... 1022, 1028

—recross (Mr. Clough) ..... 1024

## Exhibits for Lt. Hewins:

1—Geodetic Chart No. 5101 ..... 982

2—Diagram drawn by Witness

Hewins ..... 987

## H—Deposition of Philip J. Moynahan... 1042

Exhibit A—Chart ..... 1056

	Index	Page
Exhibits for Sakito (Continued):		
I—Letter from Captain Fisher, Supervising Inspector of Seventh District of Bureau of Marine Inspection & Navigation Sept. 17, 1941.....		1060
K—Chart .....		1164
L—Drawing showing Bow Line from Immediate Top to Bottom of Keel and indicating damaged portions of “Sakito Maru” .....		1170
M—Drawing showing starboard side of “Sakito Maru” .....		1174
N—Chart numbered 5143, containing some pencil notations .....		1278
P—Chart numbered 5101.....		1300
Q—Chart numbered 5143 showing Los Angeles Area in greater detail.....		1306
Witnesses for Libelant:		
Alderson, William John		
—rebuttal, direct .....		1377
—cross (Mr. Adams).....		1388
—cross (Mr. Black).....		1392
Anderson, Joakim Martin		
—direct .....		349
—cross .....		361
—recalled, cross (Mr. Adams).....		740
—cross (Mr. Cluff).....		776
—cross (Mr. Black).....		795
—surrebuttal, direct .....		1400



## Index

## Page

## Witnesses for Libelant (Continued):

Crank, Robert H.

—rebuttal, direct . . . . .1393

—cross . . . . .1399

Grothe, Bertram William

—direct . . . . .414, 433

—cross (Mr. Adams) . . . . . 449

—cross (Mr. Black) . . . . . 471

—redirect . . . . . 472

—recross . . . . . 476

Harris, Lloyd A.

—direct . . . . . 504

—recalled, direct . . . . . 527

—cross . . . . . 529

Jones, Gerald T.

—direct . . . . . 477

—cross (Mr. Adams) . . . . . 493

—cross (Mr. Eastham) . . . . . 503

—redirect . . . . . 503

Johnson, Elwood

—direct . . . . . 547

—cross (Mr. Adams) . . . . . 567

—cross (Mr. Velpmen) . . . . . 578

—redirect (Mr. Cluff) . . . . .573, 579

—recross . . . . . 577

Karsh, Lillian

—direct . . . . . 580

—cross (Mr. Adams) . . . . .592, 602

—cross (Mr. Eastham) . . . . . 593

Index	Page
Witnesses for Libelant (Continued):	
Karsh, Lillian (Continued):	
—cross (Mr. Montgomery).....	599
—cross (Mr. Lippert).....	600
—redirect .....	606
Ohiser, Louis R.	
—direct .....	661
—cross .....	675
Reeder, John H.	
—rebuttal, direct .....	1369
—cross (Mr. Adams).....	1375
—cross (Mr. Black).....	1375
—redirect .....	1376
Smith, Leonard	
—direct .....	607
—cross (Mr. Adams).....	632
—cross (Mr. Velpmen).....	646
Stiles, Stanford Roberts	
—direct .....	707
—cross (Mr. Adams).....	727, 738
—cross (Mr. Black).....	737
—recalled, direct .....	773
—cross .....	774
Walter, M. W.	
—direct .....	648
—cross .....	654
Wilver, Albert C.	
—rebuttal, direct .....	1344
—cross .....	1357

## Index

## Page

## Witnesses for Respondents:

Aono, H.

—statement of .....1290

Arthur, Frank D.

—direct .....1295

—cross .....1318

—redirect .....1330

—recross .....1334

Collins, William H.

—direct .....1061

—cross .....1071

Durkin, Owen E.

—direct .....1155

Kanda, A.

—statement of .....1288

Karasuda, T.

—statement of .....1287

Liddell, Frank

—direct ..... 761

—cross (Mr. Cluff)..... 770

—cross (Mr. Black)..... 772

Nakamura, M.

—statement of .....1293

Nanba, M.

—statement of .....1291

## Index

## Page

## Witnesses for Respondents (Continued):

## Sato, Syunzi

—direct .....	1084
—recalled, direct .....	1116, 1159
—cross .....	1175
—recalled, cross (Mr. Cluff) .....	1224, 1267
—cross (Mr. Black) .....	1266
—redirect .....	1269
—surrebuttal, direct .....	1401
—cross .....	1410

## Yokoyama, E.

—statement of .....	1292
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## NAMES AND ADDRESSES OF ATTORNEYS:

For Appellants:

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634 South Spring Street,  
Los Angeles, California.

For Appellees:

MESSRS. CLUFF & BULLARD,  
403 West 8th Street,  
Los Angeles, California. [1\*]

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In the United States Circuit Court of Appeals  
for the Ninth Circuit  
No. —

NIPPON YUSEN KABUSHIKI KAISYA, a  
Corporation, et al.,

Appellants,

vs.

HERMOSA AMUSEMENT CORPORATION,  
LTD., a Corporation, and J. M. ANDERSEN,  
Appellees.

## CITATION

United States of America—ss.

To Hermosa Amusement Corporation, Ltd., a Corporation, and J. M. Andersen, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San

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\*Page numbering appearing at foot of page of original certified Transcript of Record.

Francisco, in the State of California, on the 15th day of June, A.D. 1942, pursuant to an order allowing appeal filed on May 5, 1942, in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain cause No. 1138-BH, Central Division, wherein Nippon Yusen Kabushiki Kaisya, a Corporation, Fidelity and Deposit Company of Maryland, a Corporation, and Sterling Carr, Receiver in Bankruptcy for Said Nippon Yusen Kabushiki Kaisya, are appellants and you are appellees to show cause, if any there be, why the decree, order or judgment in the said appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Ben Harrison, United States District Judge for the Southern District of California, this 5th day of May, A. D. 1942, and of the Independence of the United States, the one hundred and sixty-sixth.

BEN HARRISON,

U. S. District Judge for the  
Southern District of California.

Service of a copy of the foregoing Citation is acknowledged this 6th day of May, 1942.

ALFRED T. CLUFF,  
CLUFF & BULLARD,

Attorney for Appellees.

[Endorsed]: Filed Jun. 26, 1942. [2]



[Title of Circuit Court of Appeals and Cause.]

CITATION

United States of America—ss.

To Hermosa Amusement Corporation, Ltd., a Corporation, and J. M. Andersen, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 15th day of June, A.D. 1942, pursuant to an order allowing appeal filed on May 5, 1942, in the Clerk's office of the District Court of the United States, in and for the Southern District of California, in that certain cause No. 1138-BH, Central Division, wherein Nippon Yusen Kabushiki Kaisya, a Corporation, Fidelity and Deposit Company of Maryland, a Corporation, and Sterling Carr, receiver in bankruptcy for said Nippon Yusen Kabushiki Kaisya, are appellants and you are appellees to show cause, if any there be, why the decree, order or judgment in the said appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf. ✓

Witness, the Honorable Ben Harrison, United States District Judge for the Southern District of California, this 5th day of May, A.D. 1942, and of the Independence of the United States, the one hundred and sixty-sixth.

BEN HARRISON,

U. S. District Judge for the  
Southern District of California.

Service of a copy of the foregoing Citation is acknowledged this 6th day of May, 1942.

ALFRED T. CLUFF,

CLUFF & BULLARD,

Attorney for Appellees.

[Endorsed]: Filed Jun. 26, 1942. [4]

---

In the District Court of the United States for  
the Southern District of California, Central  
Division.

In Admiralty No. 1138-BH

HERMOSA AMUSEMENT CORPORATION,  
LTD., a California Corporation,

Libelant,

vs.

The Motor Vessel "SAKITO MARU", her Engines, Tackle, Apparel, Furniture, etc., and the Master and Owners thereof, and N Y K Lines, Nippon Yusen Kaisha Steamship Co., a Corporation,

Respondents.

NIPPON, YUSEN KABUSHIKI KAISYA, a  
Corporation,

Claimant and Petitioner,

HERMOSA AMUSEMENT CORPORATION,  
LTD., a Corporation, J. M. ANDERSEN, DOE  
ONE, DOE TWO, DOE THREE, DOE  
FOUR, DOE FIVE and DOE SIX,

Third Party Respondents.



FIRST AMENDED LIBEL IN REM AND IN  
PERSONAM FOR COLLISION DAMAGE

To the Honorable, the Judges of the United States  
District Court for the Southern District of Cali-  
fornia:

The first amended libel of Hermosa Amusement Corporation, Ltd. against the Japanese Motor Vessel "Sakito Maru", her engines, tackle, apparel and furniture, and all persons intervening for their interest therein, and against Nippon Yusen Kabushiki Kaisya (named in the libel as N Y K Lines, Nippon Yusen Kaisha Steamship Co.), in a cause of collision, civil and maritime, alleges as follows: [17]

I.

At all times herein mentioned the libelant was and it now is a corporation, duly incorporated, organized and existing under the laws of the State of California, having its principal office in the City and County of San Francisco in said State. At the times hereinafter mentioned the libelant was the sole owner and operator of the fishing barge "Olympic II".

II.

At the times herein mentioned the respondent motor vessel "Sakito Maru" was a full powered Japanese motor freighter, owned and operated by the respondent, Nippon Yusen Kabushiki Kaisya, and during the currency of process herein was in the Harbor of Los Angeles and within the jurisdiction of the United States and of this Honorable Court.

## III.

On September 4, 1940, at or about the hour of 7:10 a. m., a collision occurred between the respondent motor vessel "Sakito Maru" and the libelant's fishing barge "Olympic II" in waters of the Pacific Ocean approximately  $3\frac{1}{4}$  nautical miles from the lighthouse on the west breakwater of Los Angeles Harbor, bearing  $162^{\circ}$  true from said lighthouse, whereby the fishing barge "Olympic II" was sunk and became, with all her tackle, apparel, furniture and equipment, a total loss.

Upon the libelant's information and belief, the facts and circumstances of the said collision were as follows:

The fishing barge "Olympic II" was an iron, unrigged, non-self-propelled fishing barge of 1766 gross tons, 258 feet long, 38 feet beam and 22.8 feet deep. She was built in 1877 at Belfast, Ireland and rigged as a sailing ship, being then named the "Star of France". In the year 1933 she was dismantled and converted to a fishing barge, and from about May 1934 [18] until September 4, 1940 was operated by the libelant in waters of the Pacific Ocean near the port of Los Angeles in the business of furnishing accommodations and facilities to members of the public to fish.

On or about May 10, 1940, at the beginning of the pleasure fishing season in Southern California waters, the "Olympic II" was anchored off the port of Los Angeles in approximately the position hereinabove described, and thereafter, continuously and until the said collision, remained at anchor at said

place. The libelant used due diligence to make the said vessel seaworthy and, until the said collision, she was at all times tight, staunch and strong, sufficiently manned, equipped and supplied, and in all respects seaworthy and fit for the service in which she was engaged.

The said place of anchorage is commonly known as Horseshoe Kelp, and for many years has been and is known and used as a fishing ground. At all times from about May 10, 1940 until the said collision there were continuously anchored at said Horseshoe Kelp the "Olympic II" and two other fishing barges, all within a distance of one-half mile from each other. At all of said times a large number of self-propelled vessels of various sizes anchored daily on the said Horseshoe Kelp for the purpose of fishing.

On the morning of September 4, 1940 the "Sakito Maru", a full powered twin screw motor freighter, approximately 500 feet long, of 7126.32 tons gross register, and with a normal cruising speed of 118 engine revolutions of 16 knots per hour, was proceeding toward Los Angeles from the Panama Canal, and approaching Los Angeles Harbor on a general northwesterly course.

The night of September 3-4, 1940 was clear until about 4:30 a. m. on September 4th. At all times the sea was calm, with little or no wind. At about 4:30 a. m. a fog set in, [19] which continued with varying density until after the time of collision. At 4:30 a. m., on account of said fog, the night watchman of the "Olympic II" started ringing on the "Olym-

pic II's" bell the regulation fog signals for a vessel at anchor, and thereafter and until the said collision continued to ring said fog signals whenever and as long as the density of the fog was sufficient materially to impair visibility. Fog signals were also rung during said time by two other barges in said area and by other vessels lying at anchor therein.

Daylight came at approximately 5:15 A. M. and at 5:40 A. M., or thereabouts, it was broad day and the anchor lights of the "Olympic II" were extinguished. At that time the fog was light and visibility was in excess of half a mile. The fog continued with varying density until the time of the accident, and at no time during said period nor at the time of the accident was the visibility less than a quarter of a mile or thereabouts. At all times from 6:00 A. M. until the appearance of the "Sakito Maru" the "Olympic II's" bell was being rung constantly at approximately 60 second intervals, with peals of several seconds duration.

At about 6:40 A. M. the first shore boat of the day arrived at the "Olympic II" and put on board 14 patrons, who thereupon engaged or prepared to engage in fishing along the vessel's rails. A few minutes after 7:00 A. M. a second boat arrived, bringing 4 additional patrons. Said last mentioned shore boat was still lying at the "Olympic II's" starboard gangway when the collision occurred.

At about 6:50 A. M. or thereabouts the fog signal of a powered vessel was heard far away and apparently to the south of the "Olympic II". The



watchman on the "Olympic II", stationed at the bell and ringing the same, as required by law, kept a [20] sharp lookout to the southward and listened intently for a repetition of the fog signals, but heard no further signals. At about 7:05 A. M. the "Sakito Maru" appeared broad on the port bow of the "Olympic II", about 2000 feet or more distant, coming apparently from the south at a speed of from 8 to 10 knots per hour, or thereabouts, and on a heading which apparently would carry her past the "Olympic II". From the moment the "Sakito Maru" was sighted and until a collision was imminent, the fog bell on the "Olympic II" was rung loudly and continuously. As the "Sakito Maru" approached she altered her course to her own starboard and, apparently without diminishing her speed, headed directly for the "Olympic II's" port side amidships. No lookout or other person was visible on the "Sakito Maru's" bow.

At approximately 7:10 the bow of the "Sakito Maru" crashed into the "Olympic II's" port side amidships, tearing a great hole in and penetrating more than 20 feet into the "Olympic II's" hull to a point beyond the line of her keel. The impact caused the "Olympic II" to list to starboard, and the momentum of the "Sakito Maru" caused the "Olympic II" to be torn from her anchors and to be driven broadside to starboard a distance of several hundred feet. Shortly after the collision the "Sakito Maru" reversed her engines, pulled her bow out of the hole in the "Olympic II's" side, and thereafter backed away and came to anchor. The "Olym-

pic II" immediately started to fill with water and to sink.

The three members of the "Olympic II's" crew immediately assembled the "Olympic II's" patrons on deck at the midship house, served out life preservers to all on board, and assisted the passengers in donning and adjusting the same. All patrons and members of the crew were fitted with life preservers. The shore boat "Lillian L", which was lying at the "Olympic II's" [21] starboard gangway, although driven violently broadside by the impact of the collision and made to take considerable water into her hull, still remained able to function. Seven persons were taken on board the "Lillian L" and she pulled away from the "Olympic II". A water taxi, the H-10 No. 17, was drifting a few hundred feet from the "Olympic II" at the time of the collision. Her operator immediately brought said water taxi alongside the "Olympic II" and ten persons were transferred to said water taxi. While the water taxi was still alongside taking persons on board, the "Olympic II" sank, carrying with her seven and possibly eight persons, who, although equipped with life preservers, were carried down in the suction of the sinking vessel and perished. The "Sakito Maru" came to anchor a considerable distance from the "Olympic II". At no time following the collision did she give or send any aid to the "Olympic II" or to those on board, except that half an hour or more after the collision the "Sakito Maru" launched a lifeboat, which ulti-

mately came to the place where the "Olympic II" had sunk.

#### IV.

The said collision and the consequent sinking and total loss of the "Olympic", her tackle, apparel and furniture, were not caused by or contributed to by any design, fault, want of care, or neglect on the part of the "Olympic II", her master or crew, or of the libelant, but were solely due to the fault and negligence of the respondents and of those in charge of the respondent motor vessel "Sakito Maru" in the following respects:

(a) The "Sakito Maru", without necessity therefor, was proceeding on a course directly across the said Horseshoe Kelp, whereat her master and officers knew or should have known fishing vessels would be at anchor.

(b) The "Sakito Maru" was proceeding at an immoderate [22] rate of speed in the fog then and there prevailing.

(c) The "Sakito Maru" did not have a proper and efficient lookout, properly stationed and attentive to his duties.

(d) The "Sakito Maru's" master, watch officers and crew were incompetent and inattentive to their duties and improperly stationed.

(e) The "Sakito Maru" failed to stop and reverse immediately upon sighting the "Olympic II".

(f) The "Sakito Maru" failed to take immediate and proper measures on sighting the "Olympic

II" to alter her course so as to avoid striking said vessel and, on the contrary, altered her course to starboard so as to strike the "Olympic II" amidships.

(g) The "Sakito Maru" failed to sound proper fog signals while proceeding through the fog.

(h) Following the collision with the "Olympic II", the "Sakito Maru" negligently maneuvered her engines so that her bow was withdrawn out of the wound in the "Olympic II's" side and drew away from the "Olympic II", permitting the "Olympic II" to sink.

(i) The "Sakito Maru" failed to make proper or any efforts to give or send aid to the "Olympic II" and to those on board the "Olympic II" put in peril by reason of the collision.

(j) And the "Sakito Maru" was negligent in other and further particulars of which the libellant is not now advised, and as to which the libellant begs leave to offer proof as and when advised and to amend this libel accordingly.

## V.

As a result of said collision and of the fault and neglect of the respondents and those in charge of the "Sakito Maru", in the respects aforesaid, the "Olympic II" sank in approximate- [23] ly 100 feet of water and became and remains, with her tackle, apparel and furniture, a total loss; whereby the libellant has suffered damage in the approximate



sum of \$75,000.00, for which the libellant prays reparation, with interest.

## VI.

All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, the libellant prays that process in accordance with the course of this court, in causes of admiralty and maritime jurisdiction, may issue against the respondent motorship "Sakito Maru", her engines, tackle, apparel and furniture; that the respondent, Nippon Yusen Kabushiki Kaisya, and all persons claiming any interest in the respondent motor vessel "Sakito Maru", may be cited to appear and answer upon oath the matters aforesaid; that this court be pleased to decree the payment to the libellant of its damages, with interest and costs; that the respondent motor vessel may be condemned and sold to pay the same, and that the libellant may have such other and further relief as may be just and proper in the premises.

ALFRED T. CLUFF,  
HUGH B. ROTCHFORD,  
GEORGE H. MOORE,  
CLUFF & BULLARD,

Proctors for Libellant. [24]

(Duly verified.)

[Endorsed]: Filed Jul. 31, 1941. [25]

[Title of District Court and Cause.]

CLAIM OF NIPPON YUSEN KABUSHIKI  
KAISYA, A CORPORATION

Now, before this honorable Court, appears Nippon Yusen Kabushiki Kaisya, a corporation of the Empire of Japan, owner of the Japanese Motorship "Sakito Maru" her motors, engines, tackle, apparel and furniture by M. Higashikuze, its resident manager, and makes claim to the said vessel, etc., and avers that it is the true and bona fide owner of said vessel, etc., and that no other person is the owner thereof.

Wherefore, it prays to defend said suit accordingly.

NIPPON YUSEN KABU-  
SHIKI KAISYA, a Corpora-  
tion.

By M. HIGASHIKUZE,  
Resident Manager. [27]

State of California,  
County of Los Angeles—ss.

M. Higashikuze, being first duly sworn, deposes and says:

That Nippon Yusen Kabushiki Kaisya, a corporation of the Empire of Japan, is the true and bona fide owner of the Japanese Motorship "Sakito Maru", her motors, engines, tackle, etc., against which suit has been commenced by Hermosa Amusement Corporation, Ltd., a California Corporation,

libelant; that at the time of the commencement of this suit the said Japanese Motorship, her motor, engines, tackle, etc., was in the lawful possession of said owner; that deponent is Resident Manager at Los Angeles, California, of Nippon Yusen Kabushiki Kaisya, a corporation of the Empire of Japan, and is duly authorized by said owner to put in this claim.

M. HIGASHIKUZE,  
Resident Manager.

Subscribed and sworn to before me this 7th day of September, 1940.

NORMAN B. COWELL,  
Notary Public in and for said  
County and State.

[Endorsed]: Filed Sep. 7, 1940. [28]

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[Title of District Court and Cause.]

## STIPULATION AND BOND FOR RELEASE

Know All Men by These Presents:

Whereas, the above named libelant has filed, or is about to file herein, a libel upon a certain claim in the total amount of \$200,000.00 against the Japanese Motorship "Sakito Maru", etc.

Fidelity and Deposit Company of Maryland, a corporation organized and existing under the laws of the State of Maryland with principal place of business in Baltimore, Maryland; and

Whereas, said Japanese Motorship "Sakito Maru", etc. has been, or is about to be, seized and attached by the United States Marshal for the Southern District of California, under and by virtue of process issued by the above entitled Court; and,

Whereas, Nippon Yusen Kabushiki Kaisya, a corporation of the Empire of Japan, has filed, or is about to file, a claim to said "Sakito Maru", as owner thereof, and a Stipulation for Costs in the usual form; [29] and is applying for the release of said "Sakito Maru" from said seizure and attachment, all in accordance with the Admiralty rules and practice of the above entitled Court; and

The parties hereto hereby consenting that in case of default or contumacy on the part of the principal or surety, execution to the amount of Forty Thousand Dollars (\$40,000.00) may issue against their goods, chattels and land.

Now Therefore, the said Nippon Yusen Kabushiki Kaisya, a corporation of the Empire of Japan, as principal, and Fidelity & Deposit Company of Maryland, a corporation, qualified to act as a surety in this Court, as surety, are held and firmly bound unto Robert E. Clark, United States Marshal for the Southern District of California, his successors, heirs, executors, administrators and assigns, and unto libellant herein, in the full sum of Forty Thousand Dollars (\$40,000.00), for the payment of which sum the said principal and surety bind themselves, their respective successors and assigns, firmly by these

presents; the condition of this obligation being such that if the said Nippon Yusen Kabushiki Kaisya, a corporation as principal herein, shall abide by and perform all orders of this Court in said cause, interlocutory or final, and shall pay whatever amount may be awarded against said Nippon Yusen Kabushiki Kaisya, as claimant herein by the final decree rendered in said cause by this Court, or by an appellate Court, if an appeal intervene, with interest, (not exceeding the said full penal sum of \$40,000.00), then this obligation to be void; otherwise, the same shall remain in full force and effect.

In Witness Whereof, the said parties hereto have hereunto [30] affixed their hands and seals this 7th day of September, 1940.

NIPPON YUSEN KABU-  
SHIKI KAISYA, a Corporation,

By M. HIGASHIKUZE,  
Resident Manager.

[Seal] FIDELITY AND DEPOSIT  
COMPANY OF MARYLAND,

By W. H. CANTWELL,  
Attorney in Fact.

THERESA FITZGIBBONS,  
Agent.

(Duly verified.)



Examined and recommended for approval as provided in Rule 13.

LILLICK, GEARY, McHOSE &  
ADAMS,  
By JOHN C. McHOSE,  
Proctors for Claimant, Nip-  
pon Yusen Kabushiki Kai-  
sya, a Corporation.

I hereby approve the foregoing bond this 7th day  
of September, 1940.

BEN HARRISON,  
United States District Judge.

[Endorsed]: Filed Sep. 7, 1940. [31]

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[Title of District Court and Cause.]

ANSWER TO LIBEL OF HERMOSA AMUSE-  
MENT CORPORATION, LTD., AND IN-  
TERROGATORIES.

To the Honorable, the Judges of the United States  
District Court for the Southern District of  
California, Central Division:

Nippon Yusen Kabushiki Kaisya, a corporation  
(sued herein under the name of N. Y. K. Lines,  
Nippon Yusen Kaisha Steamship Co., a corpora-  
tion), as respondent herein and as claimant for and  
on behalf of the respondent Motor Vessel "Sakito  
Maru", her motors, tackle, apparel, furniture, etc.,

in answer to the libel filed herein by Hermosa Amusement Corporation, a corporation, admits, denies and alleges as follows:

1) Claimant-respondent alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations of Article I, and therefore and on that ground, denies said allegations. [32]

2) Answering Article II, admits that the "Sakito Maru" is a vessel registered under the laws of the Empire of Japan and was, during the currency of process herein, in the Southern District of California and within the jurisdiction of this Honorable Court. Admits that at all times mentioned in said libel, S. Sato was the master of said vessel. Admits that at all times mentioned in said libel, Nippon Yusen Kabushiki Kaisya was, and now is, a corporation, incorporated, organized and existing under and by virtue of the laws of the Empire of Japan and that at all of said times was, and now is, the owner and operator of the "Sakito Maru", her motors, tackle, apparel, furniture, etc. Except as herein expressly admitted, denies each and every allegation of Article II.

3) Answering Article III, admits that on or about September 4, 1940, at about the hour of 7:10 o'clock A. M., on the high seas of the Pacific Ocean, at a point about  $31\frac{1}{2}$  nautical miles in a direction  $162^{\circ}$  true from the lighthouse at the end of the west breakwater at the entrance to Los Angeles Harbor, California, a collision occurred between the

“Sakito Maru” and the fishing barge “Olympic II”. Admits that following said collision the “Olympic II” sank, and as a result of said collision the “Sakito Maru” sustained substantial damage, to an extent hereinafter described. Alleges that it has no information or belief sufficient to enable it to answer the allegations contained in Article III that by reason of the sinking of the fishing barge “Olympic II” her equipment and effects were totally lost, with the loss of seven lives, and basing denial upon that ground, denies each and every, all and singular, generally and specifically, said allegations. Denies each and every allegation contained in Article III except as herein expressly admitted or otherwise denied.

4) Denies the allegations of Article IV, except as herein- [33] after expressly admitted.

Claimant-respondent is informed and believes, and upon such information and belief alleges, that the facts and circumstances of said collision are as follows:

The fishing barge “Olympic II”, a schooner built sixty-three years ago was recently converted into a pleasure fishing barge. The “Olympic II” had an iron hull, was approximately two hundred thirty-eight (238) feet in length and thirty-eight (38) feet in width, with a depth of twenty-two (22) feet. Except for a bulkhead near the stem, said fishing barge had no other bulkheads, so that her lower hold was open from the bulkhead aforementioned to the stern. There were stowed in this

open lower hold approximately fifteen hundred (1,500) tons of ballast, consisting of gravel, sand and heavy cement blocks.

At the time of the collision aforementioned, at or about 7:10 o'clock A. M., on or about September 4, 1940, the "Olympic II", unknown to the master and officers of the "Sakito Maru", was anchored at a point about  $3\frac{1}{2}$  nautical miles in a direction  $162^{\circ}$  true from the lighthouse at the end of the west breakwater at the entrance to Los Angeles Harbor, California, without permit or license from any Governmental body or agency, directly in the steamer lane for all vessels plying between Los Angeles Harbor and the Panama Canal and other ports between Los Angeles Harbor and the Panama Canal. At the time of the collision there was no person aboard said fishing barge licensed by the United States Bureau of Marine Inspection and Navigation, either in the capacity of master, officer, able bodied seaman, or ordinary seaman. At said time there were aboard the "Olympic II" three employees of libelant, three employees in a concession or eating place aboard said fishing barge and eighteen people or passengers who had been transported to [34] said fishing barge from the shore that morning aboard shore boats operated by libelant for the purpose of engaging in pleasure fishing.

The "Sakito Maru", at the time of the collision, was on a voyage from New York to Yokohama via the Panama Canal and Los Angeles Harbor. Until immediately prior to the collision and since noon,



September 3, 1940, the "Sakito Maru" was steering a course of  $340^{\circ}$  true. For several hours prior to the events in question on September 4, 1940, there had been on the bridge of the "Sakito Maru", in charge of her navigation, the first officer, and in addition, an apprentice officer and a quartermaster, acting as helmsman. At about 7 o'clock A. M., of said day, S. Sato, master of the "Sakito Maru", came on the bridge and he and the other persons aforementioned remained on the bridge during the events hereinafter related and until and after the collision.

At 7 o'clock A. M., September 4, 1940, the "Sakito Maru" was proceeding on the course aforementioned, to-wit,  $340^{\circ}$  true, at a speed of about sixteen knots per hour, with her engines at full ahead. At this time the weather was clear with practically full visibility off the starboard and port sides of the vessel and to the stern but some distance ahead of the vessel there appeared to be a haze or mist. At about 7:03 o'clock A. M. the range of visibility ahead decreased to approximately one-half ( $\frac{1}{2}$ ) a mile, and at this time the speed of the vessel was reduced to slow ahead, the sounding of regulation fog signals was commenced on the whistle and an A. B. sailor took the position of lookout at the bow of the vessel. Commencing with the time aforementioned fog signals were sounded by the apprentice officer of the "Sakito Maru" at approximately one minute intervals, each signal consisting of a single blast on the whistle of from about five (5) to six (6)



seconds in duration, and these signals were continually sounded at the intervals [35] and in the manner mentioned, until the time of the collision. During this period the master, chief officer and lookout maintained a careful watchfulness and the helmsman remained at the wheel, as aforementioned.

At about 7:09 o'clock A. M., while the "Sakito Maru" was proceeding with her engines at slow ahead, on a course of  $340^{\circ}$  true, as aforementioned, and while the master, first officer, an apprentice officer and a helmsman were on the bridge in the performance of their duties, as aforementioned, and a lookout was stationed at the bow of the vessel as aforementioned, the lookout at the bow sighted the "Olympic II" dead ahead of the "Sakito Maru" and lying at nearly right angles to her projected course and immediately notified the officers on the bridge of the presence of the fishing barge. Immediately thereafter the helm of the "Sakito Maru" was put hard to starboard, in an effort to change the course of the "Sakito Maru" so as to clear the stern of said fishing barge, the engines were stopped and put full astern and three blasts were sounded on the whistle.

Because of the distance required to change the heading of a vessel of the size and nature of the "Sakito Maru" the vessel had only commenced to swing or change her heading at the time of the impact. The collision occurred at about 7:10 o'clock A. M., the stem of the "Sakito Maru" striking the port side of the "Olympic II" nearly amid-

ships. The impact checked the forward momentum of the "Sakito Maru", and since at that time the engines were turning full astern and the propellers were in reverse motion, the "Sakito Maru" was caused to immediately gain a slight sternway and to separate from the barge. The engines were stopped at about the time of the impact but the time required to stop the propellers in their reverse motion was sufficient to permit the vessel to gain sternway and to [36] cause her to separate from the barge immediately after the impact, as aforementioned.

Upon the "Sakito Maru" being separated from the fishing barge, the master of the "Sakito Maru" considered it would be an unwise and a hazardous undertaking to attempt to move the vessel forward again in an effort to nose the bow into the hole stove in the side of the barge, it being possible and probable that such a maneuver might have resulted in the "Sakito Maru" striking the barge in a different place or that her forward momentum could not be checked before the fishing barge might be pushed or caused to list, thus further endangering the lives and safety of those aboard. Accordingly, after the "Sakito Maru" had separated from the fishing barge and her engines were stopped, the engines were again put astern and the vessel backed a sufficient distance to give safe and proper clearance for dropping anchor. While the vessel was backing for this purpose, preparations were under way for dropping the anchor and for lowering a

lifeboat. The engines of the "Sakito Maru", after this maneuver, were stopped at 7:15, the anchor was let go at 7:17, the engines were ordered slow ahead to check the sternway at 7:18, and the engines were then stopped again at 7:19. Immediately after the engines were stopped at 7:19 and the vessel came to rest in the water, a lifeboat was lowered at 7:20 A. M.

In the meantime, the "Olympic II" sank and the lifeboat after being launched, was immediately directed to the area where the barge had sunk for the purpose of locating and rescuing any persons who might be found in the water. This search was continued by the lifeboat for two hours, during which time the "Sakito Maru" remained at anchor. Before the lifeboat returned to the "Sakito Maru" a Coast Guard cutter arrived at the scene and joined with other small boats in the vicinity to search for persons who might [37] be found in the water. When this search was unavailing and no further assistance could be rendered by the "Sakito Maru", the vessel hoisted anchor at 11:57 A. M. and proceeded to the outer harbor of Los Angeles Harbor, where the vessel anchored until towed to shipyards for survey and temporary repairs.

At no time prior to the sighting of the "Olympic II" by the lookout on the "Sakito Maru" were any bells, signals or other warnings from said fishing barge heard by anyone aboard the "Sakito Maru", nor were any bells, signals or other warnings from any other fishing barge or craft anchored in the vicinity of the fishing barge "Olympic II" heard by

anyone aboard the "Sakito Maru".

5) Denies the allegations of Article V. Alleges in this respect that at all times mentioned herein, the "Sakito Maru" was in all respects seaworthy and properly equipped and supplied, was manned by a competent crew, was well and carefully navigated, was maintaining a proper and efficient lookout and was observing all the rules and regulations applicable to a vessel in her situation.

Alleges the "Sakito Maru" committed no fault or negligence in the premises and alleges upon information and belief that collision was solely due to, and proximately caused by, the carelessness and negligence of the "Olympic II" and libellant, Hermosa Amusement Corporation, Ltd., a corporation, in the following respects:

A. The fishing barge "Olympic II" was negligently, recklessly and unnecessarily anchored at a point about  $3\frac{1}{2}$  miles outside the main entrance to Los Angeles-Long Beach Harbor, directly in the steamer lane of vessels approaching Los Angeles-Long Beach Harbor from the south so as to constitute a dangerous menace to navigation, particularly during foggy and misty weather as prevailed at the time of the collision, and so as to endanger the safety not only of the barge itself and all persons aboard, but the safety of all vessels [38] approaching Los Angeles-Long Beach Harbor from the south in such regular steamer lane.

B. Despite the fact that said fishing barge constituted a dangerous menace to navigation for the



reasons and in the manner aforementioned and that the libelant knew said fishing barge was anchored in said regular steamer lane, the libelant utterly failed and neglected to furnish any notice or to cause any notice to be furnished to mariners or masters of vessels of the location of said fishing barge.

C. The "Olympic II" did not have an adequate or proper fog bell, or other sound signalling device, and did not sound proper and regulation fog signals so as to provide a warning to the approaching "Sakito Maru".

D. The "Olympic II" was grossly undermanned and incompetently manned, there being no person aboard said fishing barge as an officer or a member of the crew thereof, who held any license from the United States Bureau of Marine Inspection and Navigation, or who was experienced in navigation or who possessed an adequate or any knowledge of the rules for the prevention of collisions.

E. The "Olympic II" was in a grossly unseaworthy and unsafe condition in the following particulars, among others:

(a) Said fishing barge was entirely open and unprotected by collision bulkheads in her lower hold, from a point twenty (20) feet abaft her stem, for a distance of some two hundred eighteen (218) feet to her stern.

(b) There were stowed in said open and unprotected lower hold throughout the entire length of said fishing barge, fifteen hundred (1500) tons of ballast, consisting, among other things, of rock and gravel and heavy cement blocks.



(c) There was carried aboard said fishing barge, only [39] one lifeboat, capable of accommodating only twenty persons, which was so affixed to said fishing barge that it required a boom and a winch to raise and lower said lifeboat into the water, which operation would consume at least five minutes time.

F. Although approximately three months prior to the date of said collision the libelant, Hermosa Amusement Corporation, Ltd., was ordered by the Bureau of Marine Inspection and Navigation to make various structural and other changes to correct the unseaworthy and unsafe condition of said fishing barge, said libelant wholly failed and neglected to make any of said changes and wholly and utterly ignored the requirements of the Bureau of Marine Inspection and Navigation. The aforesaid requirements of the Bureau of Marine Inspection and Navigation, with which said libelant failed to comply, included, among other things, the following:

(a) The structure comprising the keel, stem, stern-frame, keelsons, stringers, frames, beams, decks, bulkheads, ceilings, sheathings, planking, plating, fastenings, etc., including also the frames, beams, plating or planking of superstructures, deck houses, etc., and all holds, bilges, peaks and tanks, shall be thoroughly inspected and necessary tests shall be made to determine actual conditions and suitable repairs, renewals or replacements effected where found necessary.

(b) A sufficient number of transverse water-tight bulkheads shall be fitted so that the vessel will

remain afloat with positive stability in the event any one main compartment is flooded.

(c) The structural strength of the vessel shall be in all respects sufficient.

(d) All spars, rigging and gear shall be placed in a safe condition, or removed if unnecessary. [40]

(e) An inclining test shall be made by a representative of the Bureau.

(f) All gangways, accommodation ladders and stairways, shall have suitable manropes on each side. All side gangways and ladders shall be of rugged construction. All running gear such as tackles, hooks, shackles, bridles, etc. shall be of suitable dimension and in good condition.

(g) There shall be one set of side lights suitably screened visible at least two miles.

(h) There shall be an efficient fog bell.

(i) There shall be one mechanical fog horn.

(j) There shall be a basket or other efficient signal for the purpose of indicating the side of the fishing vessel approaching vessels may pass.

(k) There shall be at least ten square feet of deck space available for each person allowed on board.

(l) A log book shall be kept in which a daily record of the number of persons on board during the day shall be entered.

(m) All bilges, holds, compartments, etc., shall be free of all rubbish, waste, oil, etc.

(n) Approved lifeboats with suitable launching arrangements and approved life rafts or buoyant

apparatus, shall be carried sufficient to provide accommodations for all persons on board. Fifty percent of such accommodations may be in lifeboats, and fifty percent may be in life rafts or buoyant apparatus.

(o) There shall be floodlights on both sides of the vessel on vessels with persons on board other than crew during the night time.

(p) A sufficient complement of licensed officers and certificated seamen, including lifeboatmen, shall be carried as may [41] be required to adequately deal with any emergency that may arise, and a licensed deck officer shall be in command of the vessel.

(q) The minimum crew while vessel is at anchor with persons other than crew on board shall be:

1 licensed master

1 licensed engineer

Sufficient certificated lifeboatmen to adequately launch and man all lifesaving equipment, 65% of which shall be able seamen.

G. The persons aboard said fishing barge in the employ of libelant, Hermosa Amusement Corporation, Ltd., who were supposedly the crew thereof, were grossly incompetent, negligent and inattentive to their duties.

H. The "Olympic II" had no proper or sufficient, or any, lookout.

I. The "Olympic II", the persons aboard said fishing barge in the employ of the libelant, Hermosa Amusement Corporation, Ltd., and the libelant,

Hermosa Amusement Corporation, Ltd., were negligent and at fault in other respects as to which claimant-respondent is not now advised, but as to which it begs leave to offer proof of, as and when advised, and to amend this answer accordingly.

6) Answering Article VI, denies that by reason of said collision libelant has suffered damage in the loss of said fishing barge "Olympic II", her engines, tackle, apparel, furniture, etc., or otherwise, in the sum of Two Hundred Thousand Dollars (\$200,000.00), or any other sum, or at all.

7) Answering Article VIII, denies that all or singular the premises are true, but admits that if true the same are within the admiralty and maritime jurisdiction of the United States and of this [42] Honorable Court.

8) Following said collision and at or about 7:14 o'clock A. M. on September 4, 1940, the fishing barge "Olympic II" sank in the waters of the Pacific Ocean, at the point where said collision occurred and has not since been raised. Said collision was proximately caused and contributed to by the negligence and fault on the part of the "Olympic II" and libelant, Hermosa Amusement Corporation, Ltd., as aforesaid. As a result of said collision, the respondent vessel "Sakito Maru" sustained damage, the repair of which required the reasonable and necessary expenditure of an amount which cannot be ascertained at present but which is estimated at the sum of \$45,000.00, no part of which has been paid claimant by libelant. The temporary and permanent repair of the damage to the "Sakito Maru"



necessarily made as a result of said collision occupied and required thirty (30) days for completion, during which period the claimant lost the entire use of said vessel and incurred various maintenance and detention expenses. Upon information and belief the reasonable value for the use of the "Sakito Maru", including such maintenance and detention expenses, amounted to the sum of \$500.00 per day. Claimant-respondent has been damaged in the sum of \$45,000, or thereabouts, on account of repairs as aforesaid, and in the further sum of \$15,000, or thereabouts, on account of said loss of use of said vessel, including said maintenance and detention expenses, totaling the sum of \$60,000, together with interest thereon from the time of such expenditures and such loss of use at the rate of 7% per annum.

Wherefore, claimant-respondent prays that libelant take nothing by reason of its libel, that said libel be dismissed, and that claimant-respondent have and recover from libelant its costs of suit incurred herein, and for such other and further relief [43] as may be just and meet in the premises.

LILLICK, GEARY, McHOSE  
& ADAMS,

JOHN C. McHOSE,  
JAMES L. ADAMS,

Proctors for Claimant-  
Respondent.

634 South Spring Street,  
Los Angeles, California. [44]

[Duly Verified.] [45]



INTERROGATORIES PROPOUNDED TO LIBELANT, HERMOSA AMUSEMENT CORPORATION, LTD., AND REQUIRED TO BE ANSWERED IN WRITING UNDER OATH.

1. Fix the point where the "Olympic II" was anchored at the time of collision, giving bearings and distances from shore points on which bearings were taken.

2. (a) State whether any notice that the "Olympic II" was anchored at that point was ever given the Bureau of Marine Inspection and Navigation, the United States Hydrographic office, or any other United States Governmental authority, and if so, state when such notice was given, and if it was in writing, attach a copy, to your answers to these interrogatories.

(b) State whether any United States Governmental authority or any other person or agency was ever requested to or did notify ship operators of the presence of the "Olympic II" at that place. If so, state when and to whom such request was made.

(c) State whether libelant, or any one acting for libelant or the "Olympic II", ever obtained authority or approval from any United States Governmental authority to anchor the "Olympic II" at that place. If such authority or approval was ever obtained, state when and by whom it was given.

3. State whether there was a fog bell on board the "Olympic II" at the time of the collision. If

there was, give the following information in detail:

- (a) The type of bell;
- (b) The dimensions of the bell;
- (c) The material of which it was made;
- (d) The name of the manufacturer of the bell;
- (e) The location of the bell on the "Olympic II";
- (f) The method used to ring the bell; [46]
- (g) Whether the bell was rung prior to the collision, and if so, who rang it, and when and how frequently preceding the collision it was rung;
- (h) Under normal weather conditions, state the approximate maximum distance at which the bell could be heard, and explain in detail how you fixed that distance.

4. Were any other fog signals or warnings to approaching vessels given preceding the collision? If so, state what those signals or warnings were.

5. (a) How many persons were in the crew of the "Olympic II" at the time of the collision?

(b) Give the names and positions of each of the crew and state whether any of them were licensed by the United States Bureau of Marine Inspection and Navigation, and if so, what license was held by each person.

(c) State the sea experience of each person in the crew of the "Olympic II".

(d) State whether any of those in the crew of the "Olympic II" held a lifeboat certificate issued by the United States Bureau of Marine Inspection and Navigation, and if so, name those who held such certificates.

6. State in detail what each person in the crew of the "Olympic II" was engaged in within the period of five minutes preceding the collision, and include a description of where each person was stationed.

7. State the number of bulkheads in the "Olympic II" and describe where they were located.

8. Describe in detail all ballast, including water, rock gravel, cement and other ballast on the "Olympic II" at the time of collision, and give the total weight of all the ballast aboard. [47]

9. State for what purpose that amount of ballast was carried on the "Olympic II".

10. (a) State the number of lifeboats on board the "Olympic II" at the time of collision and the authorized passenger carrying capacity of the same.

(b) Where were they, or it, located?

(c) What were the launching facilities provided?

(d) In how many minutes time could each lifeboat normally be launched?

(e) How many persons were required to launch each lifeboat?

(f) When had each lifeboat last been launched prior to the date of collision?

11. (a) State whether it is true that the United States Bureau of Marine Inspection and Navigation ordered libellant to make various structural and equipmental changes on the "Olympic II" prior to the collision.

(b) If so, when were those changes ordered?

(c) List the structural and equipmental changes ordered.

(d) State whether any of the changes ordered were made prior to the collision and if so, list the changes made.

12. Was any member of the crew serving as lookout on the "Olympic II" at the time of and immediately prior to the collision? If so, state who was so serving, during what period of time he was so serving, where he was stationed and what were all of his duties at such time.

13. Itemize in detail the damage sustained by libelant alleged in the libel to have resulted from the loss of the "Olympic II". [48]

Dated: November 9, 1940.

LILLICK, GEARY, McHOSE  
& ADAMS,  
JOHN C. McHOSE,  
JAMES L. ADAMS,  
Proctors for Claimant-  
Respondent.

[Endorsed]: Filed Nov. 12, 1940. [49]

[Title of District Court and Cause.]

ANSWER TO FIRST AMENDED LIBEL OF  
HERMOSA AMUSEMENT CORPORATION,  
LTD.

To the Honorable Judges of the United States District Court for the Southern District of California:

Nippon Yusen Kabushiki Kaisya, a corporation, as respondent herein and as claimant of the respondent Motor Vessel Sakito Maru, her motors, tackle, apparel, furniture, etc., in answer to the first amended libel of Hermosa Amusement Corporation, Ltd., admits, denies, and alleges as follows:

I

Admits that at all times mentioned in the first amended [50] libel the libelant was and now is a corporation organized and existing under the laws of the State of California. Alleges it has no information or belief sufficient to enable it to answer the remaining allegations of Article I of said first amended libel, and, basing its denial on that ground, denies each and every, all and singular, generally and specifically, such allegations.

II

Admits the allegations of Article II of said first amended libel.

III

Answering Article III of said first amended libel, admits that on September 4, 1940, at about 7:10 o'clock a.m., a collision occurred between the Sakito



Maru and the Olympic II in the Pacific Ocean approximately  $3\frac{1}{4}$  nautical miles from the lighthouse on the west breakwater of Los Angeles Harbor, bearing  $159\frac{1}{2}^{\circ}$  true from said lighthouse, and that the Olympic II was sunk. Denies each and every, all and singular, generally and specifically, the remaining allegations of Article III of said first amended libel, except as hereinafter expressly admitted or alleged, and in that connection repeats and realleges as though fully set forth herein all of the allegations of its answer to the libel of Hermosa Amusement Corporation, Ltd., on file herein, containing in Article 4 of said answer, from page 3, line 2, to any including page 7, line 11, thereof.

#### IV

Denies each and every, all and singular, generally and specifically, the allegations of Article IV of said first amended libel. Alleges in this respect that at all times mentioned in said first amended libel, the Sakito Maru was in all respects seaworthy and properly equipped and supplied, was manned by a competent [51] crew, was well and carefully navigated, was maintaining a proper and efficient lookout and was observing all the rules and regulations applicable to a vessel in her situation. Repeats and realleges as though fully set forth herein all of the allegations of its answer to the libel of Hermosa Amusement Corporation, Ltd. on file herein, contained in Article 5 of said answer, from page 7, line 18, to and including page 11, line 21, thereof.

V

Denies each and every, all and singular, generally and specifically, the allegations of Article V of said first amended libel. Denies that the libelant has suffered damage in the sum of \$75,000 or in any sum or at all.

VI

Denies that the premises are true, but admits that if true they are within the admiralty and maritime jurisdiction of the United States and this Court.

VII

Repeats and realleges as though fully set forth herein all of the allegations of Article 8 of its answer to the libel of Hermosa Amusement Corporation, Ltd., on file herein.

Wherefore, claimant and respondent prays that libelant take nothing by reason of its first amended libel, that said first amended libel be dismissed, and that claimant and respondent have and recover from libelant its costs of suit incurred herein, and for such other and further relief as may be just and meet in the premises.

LILLICK, GEARY, McHOSE

& ADAMS,

JAMES L. ADAMS,

REID R. BRIGGS,

Proctors for Respondent and

Claimant. [52]

(Duly verified.)

[Endorsed]: Filed Sep. 15, 1941. [53]

[Title of District Court and Cause.]

CROSS-LIBEL OF NIPPON YUSEN KABUSHIKI KAISYA, A CORPORATION.

To the Honorable, the Judges of the United States District Court for the Southern District of California, Central Division:

Nippon Yusen Kabushiki Kaisya, a corporation, respondent and claimant herein and owner of the Motor Vessel "Sakito Maru", her motors, tackle, apparel, furniture, etc., in a cause of collision, civil and maritime against Hermosa Amusement Corporation, [54] Ltd., a corporation, respectfully alleges as a cause of cross-libel as follows:

1) At all times herein mentioned, petitioner, Nippon Yusen Kabushiki Kaisya was and now is a corporation incorporated, organized and existing under and by virtue of the laws of the Empire of Japan and was and now is the owner and operator of the Motor Vessel "Sakito Maru", her motors, tackle, apparel, furniture, etc., and that said vessel was and now is registered under the laws of the Empire of Japan.

2) Upon information and belief, that at all times herein mentioned, cross-respondent, Hermosa Amusement Corporation, Ltd., was and now is a corporation duly organized and existing under and by virtue of the laws of California, having a place of business in the County of Los Angeles, Southern District of California.

3) Upon information and belief that at all times herein mentioned cross-respondent, Hermosa Amusement Corporation, Ltd., was the owner and operator of the fishing barge "Olympic II", formerly a schooner, built 63 years ago and recently converted into a pleasure fishing barge which was, at all times herein mentioned, operated by cross-respondent on the high seas of the Pacific Ocean off Los Angeles Harbor, California.

4) On or about September 4, 1940, at about the hour of 7:10 o'clock A. M., on the high seas of the Pacific Ocean, at a point about  $3\frac{1}{2}$  miles Southeast of the lighthouse at the end of the west breakwater at the entrance to Los Angeles Harbor, a collision occurred between the "Sakito Maru" and the fishing barge "Olympic II". Upon information and belief that the facts and circumstances of said collision are as follows:

The fishing barge "Olympic II", a schooner built sixty-three years ago was recently converted into a pleasure fishing barge. [55] The "Olympic II" had an iron hull, was approximately two hundred thirty-eight (238) feet in length and thirty-eight (38) feet in width, with a depth of twenty-two (22) feet. Except for a bulkhead near the stem, said fishing barge had no other bulkheads, so that her lower hold was open from the bulkhead aforementioned to the stern. There were stowed in this open lower hold approximately fifteen hundred (1,500) tons of ballast, consisting of gravel, sand and heavy cement blocks.

At the time of the collision aforementioned, at



or about 7:10 o'clock A. M., on or about September 4, 1940, the "Olympic II", unknown to the master and officers of the "Sakito Maru", was anchored at a point about  $3\frac{1}{2}$  nautical miles in a direction  $162^{\circ}$  true from the lighthouse at the end of the west breakwater at the entrance to Los Angeles Harbor, California, without permit or license from any Governmental body or agency, directly in the steamer lane for all vessels plying between Los Angeles Harbor and the Panama Canal and other points between Los Angeles Harbor and the Panama Canal. At the time of the collision there was no person aboard said fishing barge licensed by the United States Bureau of Marine Inspection and Navigation, either in the capacity of master, officer, able bodied seaman, or ordinary seaman. At said time there were aboard the "Olympic II" three employees of libelant, three employees in a concession or eating place aboard said fishing barge and eighteen people or passengers who had been transported to said fishing barge from the shore that morning aboard shore boats operated by libelant for the purpose of engaging in pleasure fishing.

The "Sakito Maru", at the time of the collision, was on a voyage from New York to Yokohama via the Panama Canal and Los Angeles Harbor. Until immediately prior to the collision and since noon, September 3, 1940, the "Sakito Maru" was steering a [56] course of  $340^{\circ}$  true. For several hours prior to the events in question on September 4, 1940, there had been on the bridge of the "Sakito Maru" in



charge of her navigation, the first officer, and in addition, an apprentice officer and a quartermaster, acting as helmsman. At about 7 o'clock A. M. of said day, S. Sato, master of the "Sakito Maru", came on the bridge and he and the other persons aforementioned remained on the bridge during the events hereinafter related and until and after the collision.

At 7 o'clock A. M., September 4, 1940, the "Sakito Maru" was proceeding on the course aforementioned, to-wit, 340° true, at a speed of about sixteen knots per hour, with her engines at full ahead. At this time the weather was clear with practically full visibility off the starboard and port sides of the vessel and to the stern but some distance ahead of the vessel there appeared to be a haze or mist. At about 7:03 o'clock A. M. the range of visibility ahead decreased to approximately one-half ( $\frac{1}{2}$ ) a mile, and at this time the speed of the vessel was reduced to slow ahead, the sounding of regulation fog signals was commenced on the whistle and an A. B. sailor took the position of lookout at the bow of the vessel. Commencing with the time aforementioned fog signals were sounded by the apprentice officer of the "Sakito Maru" at approximately one minute intervals, each signal consisting of a single blast on the whistle of from about five (5) to six (6) seconds in duration, and these signals were continually sounded at the intervals and in the manner mentioned, until the time of the collision. During this period the master, chief officer and lookout

maintained a careful watchfulness and the helmsman remained at the wheel, as aforementioned.

At about 7:09 o'clock A. M., while the "Sakito Maru" was proceeding with her engines at slow ahead, on a course of  $340^{\circ}$  [57] true, as aforementioned, and while the master, first officer, an apprentice officer and a helmsman were on the bridge in the performance of their duties, as aforementioned, and a lookout was stationed at the bow of the vessel as aforementioned, the lookout at the bow sighted the "Olympic II" dead ahead of the "Sakito Maru" and lying at nearly right angles to her projected course and immediately notified the officers on the bridge of the presence of the fishing barge. Immediately thereafter the helm of the "Sakito Maru" was put hard to starboard, in an effort to change the course of the "Sakito Maru" so as to clear the stern of said fishing barge, the engines were stopped and put full astern and three blasts were sounded on the whistle.

Because of the distance required to change the heading of a vessel of the size and nature of the "Sakito Maru" the vessel had only commenced to swing or change her heading at the time of the impact. The collision occurred at about 7:10 o'clock A. M., the stem of the "Sakito Maru" striking the port side of the "Olympic II" nearly amidships. The impact checked the forward momentum of the "Sakito Maru", and since at that time the engines were turning full astern and the propellers were in reverse motion, the "Sakito Maru" was caused to

immediately gain a slight sternway and to separate from the barge. The engines were stopped at about the time of the impact but the time required to stop the propellers in their reverse motion was sufficient to permit the vessel to gain sternway and to cause her to separate from the barge immediately after the impact, as aforementioned.

Upon the "Sakito Maru" being separated from the fishing barge, the master of the "Sakito Maru" considered it would be an unwise and hazardous undertaking to attempt to move the vessel forward again in an effort to nose the bow into the hole stove in [58] the side of the barge, it being possible and probable that such a maneuver might have resulted in the "Sakito Maru" striking the barge in a different place or that her forward momentum could not be checked before the fishing barge might be pushed or caused to list, thus further endangering the lives and safety of those aboard. Accordingly, after the "Sakito Maru" had separated from the fishing barge and her engines were stopped, the engines were again put astern and the vessel backed a sufficient distance to give safe and proper clearance for dropping anchor. While the vessel was backing for this purpose, preparations were under way for dropping the anchor and for lowering a lifeboat. The engines of the "Sakito Maru", after this maneuver, were stopped at 7:15, the anchor was let go at 7:17, the engines were ordered slow ahead to check the sternway at 7:18, and the engines were then stopped again at 7:19. Immediately after

the engines were stopped at 7:19 and the vessel came to rest in the water, a lifeboat was lowered at 7:20 A. M.

In the meantime, the "Olympic II" sank and the lifeboat after being launched, was immediately directed to the area where the barge had sunk for the purpose of locating and rescuing any persons who might be found in the water. This search was continued by the lifeboat for two hours, during which time the "Sakito Maru" remained at anchor. Before the lifeboat returned to the "Sakito Maru" a Coast Guard cutter arrived at the scene and joined with other small boats in the vicinity to search for persons who might be found in the water. When this search was unavailing and no further assistance could be rendered by the "Sakito Maru", the vessel hoisted anchor at 11:57 A. M. and proceeded to the outer harbor of Los Angeles Harbor, where the vessel anchored until towed to shipyards for survey and temporary repairs.

At no time prior to the sighting of the "Olympic II" by the [59] lookout on the "Sakito Maru" were any bells, signals or other warnings from said fishing barge heard by anyone aboard the "Sakito Maru", nor were any bells, signals or other warnings from any other fishing barge or craft anchored in the vicinity of the fishing barge "Olympic II" heard by anyone aboard the "Sakito Maru".

5) At all times mentioned herein the "Sakito Maru" was in all respects seaworthy and properly equipped and supplied, was manned by a competent



crew, was well and carefully navigated, was maintaining a proper and efficient lookout and was observing all the rules and regulations applicable to a vessel in her situation.

6) The “Sakito Maru” committed no fault or negligence in the premises. Upon information and belief that the collision was solely due to and proximately caused by the carelessness and negligence of the “Olympic II” and cross-respondent Hermosa Amusement Corporation, Ltd., in the following respects:

A. The fishing barge “Olympic II” was negligently, recklessly and unnecessarily anchored at a point about  $31\frac{1}{2}$  miles outside the main entrance to Los Angeles-Long Beach Harbor, directly in the steamer lane of vessels approaching Los Angeles-Long Beach Harbor from the south so as to constitute a dangerous menace to navigation, particularly during foggy and misty weather as prevailed at the time of the collision, and so as to endanger the safety not only of the barge itself and all persons aboard, but the safety of all vessels approaching Los Angeles-Long Beach Harbor from the south in such regular steamer lane.

B. Despite the fact that said fishing barge constituted a dangerous menace to navigation for the reasons and in the manner aforementioned and that the libelant knew said fishing barge was anchored in said regular steamer lane, the libelant utterly failed and neglected to furnish any notice or to cause any notice to be [60] furnished to mariners or



masters of vessels of the location of said fishing barge.

C. The "Olympic II" did not have an adequate or proper fog bell, or other sound signalling device, and did not sound proper and regulation fog signals so as to provide a warning to the approaching "Sakito Maru".

D. The "Olympic II" was grossly undermanned and incompetently manned, there being no person aboard said fishing barge as an officer or member of the crew thereof, who held any license from the United States Bureau of Marine Inspection and Navigation, or who was experienced in navigation or who possessed any adequate or any knowledge of the rules for the prevention of collisions.

E. The "Olympic II" was in a grossly unseaworthy and unsafe condition in the following particulars, among others:

(a) Said fishing barge was entirely open and unprotected by collision bulkheads in her lower hold, from a point twenty (20) feet abaft her stem, for a distance of some two hundred eighteen (218) feet to her stern.

(b) There were stowed in said open and unprotected lower hold throughout the entire length of said fishing barge, fifteen hundred (1500) tons of ballast, consisting, among other things, of rock and gravel and heavy cement blocks.

(c) There was carried aboard said fishing barge, only one lifeboat, capable of accommodating only twenty persons, which was so affixed to said fishing

barge that it required a boom and a winch to raise and lower said lifeboat into the water, which operation would consume at least five minutes time.

F. Although approximately three months prior to the date of said collision the libellant, Hermosa Amusement Corporation, Ltd., was ordered by the Bureau of Marine Inspection and Navigation to [61] make various structural and other changes to correct the unseaworthy and unsafe condition of said fishing barge, said libellant wholly failed and neglected to make any of said changes and wholly and utterly ignored the requirements of the Bureau of Marine Inspection and Navigation. The afore-said requirements of the Bureau of Marine Inspection and Navigation, with which said libellant failed to comply, included, among other things, the following:

(a) The structure comprising the keel, stem, stern-frame, keelsons, stringers, frames, beams, decks, bulkheads, ceilings, sheathings, planking, plating, fastenings, etc., including also the frames, beams, plating or planking of superstructures, deck houses, etc., and all holds, bilges, peaks and tanks, shall be thoroughly inspected and necessary tests shall be made to determine actual conditions and suitable repairs, renewals or replacements effected where found necessary.

(b) A sufficient number of transverse watertight bulkheads shall be fitted so that the vessel will remain afloat with positive stability in the event any one main compartment is flooded.

(c) The structural strength of the vessel shall be in all respects sufficient.

(d) All spars, rigging and gear shall be placed in a safe condition, or removed if unnecessary.

(e) An inclining test shall be made by a representative of the Bureau:

(f) All gangways, accommodation ladders and stairways, shall have suitable manropes on each side. All side gangways and ladders shall be of rugged construction. All running gear such as tackles, hooks, shackles, bridles, etc., shall be of suitable dimensions and in good condition. [62]

(g) There shall be one set of side lights suitably screened visible at least two miles.

(h) There shall be an efficient fog bell.

(i) There shall be one mechanical fog horn.

(j) There shall be a basket or other efficient signal for the purpose of indicating the side of the fishing vessel approaching vessels may pass.

(k) There shall be at least ten square feet of deck space available for each person allowed on board.

(l) A log book shall be kept in which a daily record of the number of persons on board during the day shall be entered.

(m) All bilges, holds, compartments, etc., shall be free of all rubbish, waste, oil, etc.

(n) Approved lifeboats with suitable launching arrangements and approved life rafts or buoyant apparatus, shall be carried sufficient to provide accommodations for all persons on board. Fifty per cent of such accommodations may be in lifeboats,

and fifty percent may be in life rafts or buoyant apparatus.

(o) There shall be floodlights on both sides of the vessel on vessels with persons on board other than crew during the night time.

(p) A sufficient complement of licensed officers and certificated seamen, including lifeboatmen, shall be carried as may be required to adequately deal with any emergency that may arise, and a licensed deck officer shall be in command of the vessel.

(q) The minimum crew while vessel is at anchor with persons other than crew on board shall be:

1 licensed master

1 licensed engineer

Sufficient certificated lifeboatmen to adequately launch and man all lifesaving [63] equipment, 65% of which shall be able seamen.

G. The persons aboard said fishing barge in the employ of libelant, *Hermosa Amusement Corporation, Ltd.*, who were supposedly the crew thereof, were grossly incompetent, negligent and inattentive to their duties.

H. The "Olympic II" had no proper or sufficient, or any, lookout.

I. The "Olympic II", the persons aboard said fishing barge in the employ of the libelant, *Hermosa Amusement Corporation, Ltd.*, and the libelant, *Hermosa Amusement Corporation, Ltd.*, were negligent and at fault in other respects as to which claimant-respondent is not now advised, but as to which it begs leave to offer proof of, as and when advised, and to amend this answer accordingly.



7) As a result of said collision, the "Sakito Maru" sustained damage, the repair of which required the reasonable and necessary expenditure of an amount which cannot be ascertained at present but which is estimated at the sum of \$45,000, no part of which has been paid cross-libelant by cross-respondent. The temporary and permanent repair of the damage to the "Sakito Maru" necessarily made as a result of said collision occupied and required thirty (30) days for completion, during which period cross-libelant lost the entire use of said vessel and incurred various maintenance and detention expenses. Upon information and belief that the reasonable value for the use of the "Sakito Maru", including such maintenance and detention expenses, amounted to the sum of \$500.00 per day. That cross-libellant has been damaged in the sum of \$45,000.00 or thereabouts, on account of repairs as aforesaid, and the further sum of \$15,000.00, or thereabouts, on account of said loss of use of said vessel, including said maintenance and [64] detention expenses, totaling the sum of \$60,000.00, together with interest thereon from the time of such expenditures and such loss of use at the rate of 7% per annum.

8) That all and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

Wherefore, cross-libelant prays:

1) That process in due form of law according



to the course of this Honorable Court in causes of admiralty and maritime jurisdiction, may issue against cross-respondent, and that cross-respondent may be cited to appear and answer on oath all and singular the matters aforesaid;

2) That this Honorable Court be pleased to decree payment to cross-libelant of the damages aforesaid with interest and costs.

3) That the libel herein filed by cross-respondent be stayed pursuant to the 50th Admiralty Rule until proper security shall have been given on behalf of cross-respondent in the present suit.

4) For such other and further relief as may be just and meet in the premises.

LILLICK, GEARY, McHOSE  
& ADAMS,

JOHN C. McHOSE,

JAMES L. ADAMS,

Proctors for Claimant-  
Respondent.

634 South Spring Street,  
Los Angeles, California. [65]

(Duly verified.)

[Endorsed]: Filed Nov. 12, 1940. [66]

[Title of District Court and Cause.]

### SUBSTITUTION OF ATTORNEYS

The undersigned, Hermosa Amusement Corporation, Ltd., a California corporation, Libelant and cross-respondent in the above entitled cause, does hereby substitute Cluff & Bullard, 921 Garfield Building, Los Angeles, California, as its Proctors therein, in the place and stead of Lloyd S. Nix.

Dated this 6th day of December, 1940.

HERMOSA AMUSEMENT  
CORPORATION, LTD.,  
By J. M. ANDERSEN  
Pres.

The undersigned, Lloyd S. Nix, does hereby consent to the above substitution.

LLOYD S. NIX

The undersigned, Cluff & Bullard, do hereby agree to the above substitution.

CLUFF & BULLARD  
By ALFRED T. CLUFF

It is so ordered.

BEN HARRISON  
Judge

Dated Dec. 13, 1940.

[Endorsed]: Filed Dec. 13, 1940. [68]

[Title of District Court and Cause.]

AMENDED PETITION TO BRING IN THIRD  
PARTY RESPONDENTS UNDER ADMIR-  
ALTY RULE 56.

To the Honorable, the Judges of the United States  
District Court for the Southern District of  
California, Central Division:

The amended petition of Nippon Yusen Kabushiki Kaisya (sued herein under the name of N Y K Lines and Nippon Yusen Kaisha Steamship Co., a corporation), owner of the Motor Vessel "Sakito Maru" and respondent and claimant herein, against Hermosa Amusement Corporation, Ltd., a corporation, J. M. Andersen, Doe One, Doe Two, Doe Three, Doe Four, Doe Five and Doe Six, in a cause of collision, civil and maritime, alleges as follows:

1. At all times hereinafter mentioned petitioner, Nippon Yusen Kabushiki Kaisya, was, and now is, a corporation, incorporated, [70] organized and existing under and by virtue of the laws of the Empire of Japan; at all of said times petitioner was, and now is, the owner and operator of the Motor Vessel "Sakito Maru", her motors, tackle, apparel, furniture, etc., and that said vessel was, and now is, registered under the laws of the Empire of Japan.

2. Upon information and belief that at all times hereinafter mentioned third party respondent Hermosa Amusement Corporation, Ltd., was, and now is, a corporation duly organized and existing under and by virtue of the laws of California and having a place

of business in the County of Los Angeles, Southern District of California. Upon information and belief that at all times hereinafter mentioned third party respondent J. M. Andersen was, and now is, a resident of the County of Los Angeles, Southern District of California.

3. Petitioner is ignorant of the true names or capacities, whether individual, associate, corporate, or otherwise, of the third party respondents, Doe One, Doe Two, Doe Three, Doe Four, Doe Five and Doe Six, and therefore names said third party respondents, and each of them, by such fictitious names, and prays that their true names and capacities, when ascertained, may be incorporated herein by appropriate amendments.

4. Upon information and belief that at all times hereinafter mentioned third party respondents were the owners and operators, and third party respondent J. M. Andersen was the master, of the Fishing Barge "Olympic II", formerly a schooner, built sixty-three (63) years ago, and recently converted into a pleasure fishing barge, which was operating on the high seas off Los Angeles Harbor, California; that on or about September 4, 1940, a libel was filed herein by Hermosa Amusement Corporation, Ltd., a corporation, against this petitioner and against the Motor Vessel "Sakito Maru" in a cause of damage, civil and maritime, alleging, among other things, on Septem- [71]  
ber 4, 1940, off Los Angeles Harbor, California, the "Sakito Maru" collided with and sank the Fishing Barge "Olympic II"; that on or about September 6,

1940, an intervening libel was filed by George W. Berger, covering labor for installation and certain radio broadcasting equipment; that on or about September 6, 1940, an intervening libel was filed by Norma Rubin, Lena Karsh, Florence, Lillian and Shirley Rose Karsh, by Lena Karsh, their mother and guardian ad litem, for the loss of their father Joseph Karsh, and certain personal property and effects; that on or about September 6, 1940, an intervening libel was filed by International Broadcasting Company, a corporation, covering the loss of one 5 killowatt radio broadcasting station; that on or about September 7, 1940, Elwood Johnson and Albertine K. Johnson filed an intervening libel, for the loss of their son Curtis Elwood Johnson; that on or about January 18, 1941, an intervening libel was filed by Lena Karsh, Administratrix of the Estate of Joseph Karsh, Deceased, in behalf of herself as widow and the children of herself and Joseph Karsh, for the loss of said Joseph Karsh and for his funeral and burial expenses, alleged to have been occasioned by the collision alleged in said petition; that an intervening libel was filed on or about December 17, 1940, by John Gilbert Montgomery, by his guardian ad litem, Margerie L. Montgomery, for personal injuries and damage to and loss of clothing and fishing equipment, alleged to have been occasioned by the collision alleged in said petition; and that on or about February 6, 1941, an amended libel in intervention was filed by Grace E. Mayo and Frank F. Mayo, individually and as administrators of the



estate of Roy A. Mayo, Deceased, for the death of said Roy A. Mayo.

5. Petitioner alleges upon information and belief that the facts and circumstances of said collision are as follows:

The fishing barge "Olympic II", a schooner built sixty-three years ago, was recently converted into a pleasure fishing barge. [72] The "Olympic II" had an iron hull, was approximately two hundred thirty eight (238) feet in length and thirty-eight (38) feet in width, with a depth of twenty-two (22) feet. Except for a bulkhead near the stem, said fishing barge had no other bulkheads, so that her lower hold was open from the bulkhead aforementioned to the stern. There were stowed in this open lower hold approximately fifteen hundred (1500) tons of ballast, consisting of gravel, sand and heavy cement blocks.

At the time of the collision aforementioned, at or about 7:10 o'clock a. m., on or about September 4, 1940, the "Olympic II", unknown to the master and officers of the "Sakito Maru", was anchored at a point about  $31\frac{1}{2}$  nautical miles in a direction  $162^{\circ}$  true from the lighthouse at the end of the west breakwater at the entrance to Los Angeles Harbor, California, without permit or license from any Governmental body or agency, directly in the steamer lane for all vessels plying between Los Angeles Harbor and the Panama Canal and other ports between Los Angeles Harbor and the Panama Canal. At the time of the collision there was no person aboard said fishing barge licensed by the United States Bureau of

Marine Inspection and Navigation, either in the capacity of master, officer, able bodied seaman, or ordinary seaman. At said time there were aboard the "Olympic II", three employees of libelant, three employees in a concession or eating place aboard said fishing barge and eighteen people or passengers who had been transported to said fishing barge from the shore that morning aboard shore boats operated by libelant for the purpose of engaging in pleasure fishing.

The "Sakito Maru", at the time of the collision, was on a voyage from New York to Yokohama via the Panama Canal and Los Angeles Harbor. Until immediately prior to the collision and since noon, September 3, 1940, the "Sakito Maru" was steering a course of  $340^{\circ}$  true. For several hours prior to the events in question on September 4, 1940, [73] there had been on the bridge of the "Sakito Maru", in charge of her navigation, the first officer, and in addition, an apprentice officer and a quartermaster, acting as helmsman. At about 7 o'clock of said day, S. Sato, master of the "Sakito Maru", came on the bridge and he and the other persons aforementioned remained on the bridge during the events hereinafter related and until and after the collision.

At 7 o'clock a. m., September 4, 1940, the "Sakito Maru" was proceeding on the course aforementioned, to-wit,  $340^{\circ}$  true, at a speed of about sixteen knots, with her engines at full ahead. At this time the weather was clear with practically full visibility off the starboard and port sides of the vessel and to the

stern but some distance ahead of the vessel there appeared to be a haze or mist. At about 7:03 o'clock a. m. the range of visibility ahead decreased to approximately one-half ( $1\frac{1}{2}$ ) a mile, and at this time the speed of the vessel was reduced to slow ahead, the sounding of regulation fog signals was commenced on the whistle and an A. B. sailor took the position of lookout at the bow of the vessel. Commencing with the time aforementioned fog signals were sounded by the apprentice officer of the "Sakito Maru" at approximately one minute intervals, each signal consisting of a single blast on the whistle of from about five (5) to six (6) seconds in duration, and these signals were continually sounded at the intervals and in the manner mentioned, until the time of the collision. During this period the master, chief officer and lookout maintained a careful watchfulness and the helmsman remained at the wheel as aforementioned.

At about 7:09 o'clock a. m., while the "Sakito Maru" was proceeding with her engines at slow ahead, on a course of  $340^{\circ}$  true, as aforementioned, and while the master, first officer, an apprentice officer and a helmsman were on the bridge in the performance of their duties, as aforementioned, and a lookout was stationed at [74] the bow of the vessel as aforementioned, the lookout at the bow sighted the "Olympic II" dead ahead of the "Sakito Maru" and lying at nearly right angles to her projected course and immediately notified the officers on the bridge of the presence of the fishing barge. Immedi-

ately thereafter the helm of the "Sakito Maru" was put hard to starboard, in an effort to change the course of the "Sakito Maru" so as to clear the stern of said fishing barge, the engines were stopped and put full astern and three blasts were sounded on the whistle.

Because of the distance required to change the heading of a vessel of the size and nature of the "Sakito Maru" the vessel had only commenced to swing or change her heading at the time of the impact. The collision occurred at about 7:10 o'clock a. m., the stem of the "Sakito Maru" striking the port side of the "Olympic II" nearly amidships. The impact checked the forward momentum of the "Sakito Maru", and since at that time the engines were turning full astern and the propellers were in reverse motion, the "Sakito Maru" was caused to immediately gain a slight sternway and to separate from the barge. The engines were stopped at about the time of the impact but the time required to stop the propellers in their reverse motion was sufficient to permit the vessel to gain sternway and to cause her to separate from the barge immediately after the impact, as aforementioned.

Upon the "Sakito Maru" being separated from the fishing barge, the master of the "Sakito Maru" considered it would be an unwise and a hazardous undertaking to attempt to move the vessel forward again in an effort to nose the bow into the hole stove in the side of the barge, it being possible and probable that such a maneuver might have resulted in the



“Sakito Maru” striking the barge in a different place or that her forward momentum could not [75] be checked before the fishing barge might be pushed or caused to list, thus further endangering the lives and safety of those aboard. Accordingly, after the “Sakito Maru” had separated from the fishing barge and her engines were stopped, the engines were again put astern and the vessel backed a sufficient distance to give safe and proper clearance for dropping anchor. While the vessel was backing for this purpose, preparations were under way for dropping the anchor and for lowering a lifeboat. The engines of the “Sakito Maru”, after this maneuver, were stopped at 7:15, the anchor was let go at 7:17, the engines were ordered slow ahead to check the sternway at 7:18, and the engines were then stopped again at 7:19. Immediately after the engines were stopped at 7:19 and the vessel came to rest in the water, a lifeboat was lowered at 7:20 a. m.

In the meantime, the “Olympic II” sank and the lifeboat after being launched, was immediately directed to the area where the barge had sunk for the purpose of locating and rescuing any persons who might be found in the water. This search was continued by the lifeboat for two hours, during which time the “Sakito Maru” remained at anchor. Before the lifeboat returned to the “Sakito Maru” a Coast Guard cutter arrived at the scene and joined with other small boats in the vicinity to search for persons who might be found in the water. When this search was unavailing and no further assistance could



be rendered by the "Sakito Maru", the vessel hoisted anchor at 11:57 a. m. and proceeded to the outer harbor of Los Angeles Harbor, where the vessel anchored until towed to shipyards for survey and temporary repairs.

At no time prior to the sighting of the "Olympic II" by the lookout on the "Sakito Maru" were any bells, signals or other warnings from said fishing barge heard by anyone aboard the "Sakito Maru", nor were any bells, signals or other warnings from any other [76] fishing barge or craft anchored in the vicinity of the fishing barge "Olympic II" heard by anyone aboard the "Sakito Maru".

6. The "Sakito Maru" committed no fault or negligence in the premises and upon information and belief the said collision was solely due to and proximately caused by the carelessness and negligence of the fishing barge "Olympic II" and third party respondents in the following respects:

A. The fishing barge "Olympic II" was negligently, recklessly and unnecessarily anchored at a point about  $3\frac{1}{2}$  miles outside the main entrance to Los Angeles-Long Beach Harbor, directly in the steamer lane of vessels approaching Los Angeles-Long Beach Harbor from the south so as to constitute a dangerous menace to navigation, particularly during foggy and misty weather as prevailed at the time of the collision, and so as to endanger the safety not only of the barge itself and all persons aboard, but the safety of all vessels approaching Los Angeles-Long Beach Harbor from the south in such regular steamer lane.

B. Despite the fact that said fishing barge constituted a dangerous menace to navigation for the reasons and in the manner aforementioned and that the third party respondents knew said fishing barge was anchored in said regular steamer lane, the third party respondents utterly failed and neglected to furnish any notice or to cause any notice to be furnished to mariners or masters of vessels of the location of said fishing barge.

C. The "Olympic II" did not have an adequate or proper fog bell, or other sound signalling device, and did not sound proper and regulation fog signals so as to provide a warning to the approaching "Sakito Maru."

D. The "Olympic II" was grossly undermanned and incompetently manned, there being no person aboard said fishing barge [77] as an officer or a member of the crew thereof, who held any license from the United States Bureau of Marine Inspection and Navigation, or who was experienced in navigation or who possessed an adequate or any knowledge of the rules for the prevention of collisions.

E. The "Olympic II" was in a grossly unseaworthy and unsafe condition in the following particulars, among others:

(a) Said fishing barge was entirely open and unprotected by collision bulkheads in her lower hold, from a point twenty (20) feet abaft her stem, for a distance of some two hundred eighteen (218) feet to her stern.

(b) There were stowed in said open and unpro-

tected lower hold throughout the entire length of said fishing barge, fifteen hundred (1500) tons of ballast, consisting, among other things, of rock and gravel and heavy cement blocks.

(c) There was carried aboard said fishing barge only one lifeboat, capable of accommodating only twenty persons, which was so affixed to said fishing barge that it required a boom and a winch to raise and lower said lifeboat into the water, which operation would consume at least five minutes time.

F. Although approximately three months prior to the date of said collision third party respondents were ordered by the United States Bureau of Marine Inspection and Navigation to make various structural and other changes to correct the unseaworthy and unsafe condition of said fishing barge, third party respondents wholly failed and neglected to make any of said changes and wholly and utterly ignored the requirements of the Bureau of Marine Inspection and Navigation. The aforesaid requirements of the Bureau of Marine Inspection and Navigation, included, among other things, the following:

(a) The structure comprising the keel, [78] stem, sternframe, keelsons, stringers, frames, beams, decks, bulkheads, ceilings, sheathings, planking, plating, fastenings, etc., including also the frames, beams, plating or planking of superstructures, deck houses, etc., and all holds, bilges, peaks and tanks, shall be thoroughly inspected and necessary tests shall be made to determine actual conditions and suitable repairs, renewals or replacements effected where found necessary.

(b) A sufficient number of transverse watertight bulkheads shall be fitted so that the vessel will remain afloat with positive stability in the event any one main compartment is flooded.

(c) The structural strength of the vessel shall be in all respects sufficient.

(d) All spars, rigging and gear shall be placed in a safe condition, or removed if unnecessary.

(e) An inclining test shall be made by a representative of the Bureau.

(f) All gangways, accommodation ladders and stairways, shall have suitable manropes on each side. All side gangways and ladders shall be of rugged construction. All running gear such as tackles, hooks, shackles, bridles, etc., shall be of suitable dimensions and in good condition.

(g) There shall be one set of side lights suitably screened visible at least two miles.

(h) There shall be an efficient fog bell.

(i) There shall be one mechanical fog horn.

(j) There shall be a basket or other efficient signal for the purpose of indicating the side of the fishing vessel approaching vessels may pass.

(k) There shall be at least ten square [79] feet of deck space available for each person allowed on board.

(l) A log book shall be kept in which a daily record of the number of persons on board during the day shall be entered.

(m) All bilges, holds, compartments, etc., shall be free of all rubbish, waste, oil, etc.



(n) Approved lifeboats with suitable launching arrangements and approved life rafts or buoyant apparatus, shall be carried sufficient to provide accommodations for all persons on board. Fifty percent of such accommodations may be in lifeboats, and fifty percent may be in life rafts or buoyant apparatus.

(o) There shall be floodlights on both sides of the vessel on vessels with persons on board other than crew during the night time.

(p) A sufficient complement of licensed officers and certificated seamen, including lifeboatmen, shall be carried as may be required to adequately deal with any emergency that may arise, and a licensed deck officer shall be in command of the vessel.

(q) The minimum crew while vessel is at anchor with persons other than crew on board shall be:

1 licensed master

1 licensed engineer

Sufficient certificated lifeboatmen to adequately launch and man all life-saving equipment, 65% of which shall be able seamen.

G. The persons aboard said fishing barge in the employ of third party respondent, Hermosa Amusement Corporation, Ltd., who were supposedly the crew thereof, were grossly incompetent, negligent and inattentive to their duties. [80]

H. The "Olympic II" had no proper or sufficient, or any, lookout.

I. The "Olympic II" and third party respondents were negligent and at fault in other respects as



to which petitioner is not now advised, but as to which it begs leave to offer proof, as and when advised, and to amend this petition accordingly.

7. As a result of said collision the "Sakito Maru" sustained damage, the repair of which required the reasonable and necessary expenditure of an amount which cannot be ascertained at present but which is estimated at the sum of \$45,000.00, no part of which has been paid petitioner. The temporary and permanent repair of the damage to the "Sakito Maru" necessarily made as a result of said collision occupied and required thirty (30) days for completion, during which period petitioner lost the entire use of said vessel and incurred various maintenance and detention expenses. Upon information and belief that the reasonable value for the use of the "Sakito Maru", including such maintenance and detention expenses, amounted to the sum of \$500.00 per day. That petitioner has been damaged in the sum of \$45,000.00, or thereabouts, on account of repairs as aforesaid, and the further sum of \$15,000.00, or thereabouts, on account of said loss of use of said vessel, including said maintenance and detention expenses, totaling the sum of \$60,000.00, together with interest thereon from the time of such expenditures and such loss of use at the rate of 7% per annum.

8. Petitioner has filed herein its cross-libel against libelant and cross-respondent Hermosa Amusement Corporation, Ltd., demanding payment of the damages aforesaid with interest and costs.

9. Upon information and belief that any liability

herein by reason of the matters alleged in the libel and in the intervening libels was caused by the fault and negligence of third [81] party respondents as hereinabove alleged and third party respondents are wholly or at least partly liable to libelant and to intervening libelants and should therefore be parties herein and proceeded against directly in this court by libelant and by intervening libelants.

10. Upon information and belief that third party respondents are also wholly or at least partly liable to petitioner for the damage sustained by the "Sakito Maru" and by petitioner as owner thereof, as hereinabove alleged and should therefore be parties herein and proceeded against together with libelant and cross-respondent in the cross-libel proceedings filed herein by petitioner.

11. Petitioner has filed herein the customary stipulation for petitioner's costs as required by the rules and practice of this court.

12. Petitioner has filed its answer herein and has obtained the consent of the court to the filing of this petition.

13. All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, petitioner prays:

1. That a citation in due form of law may issue against third party respondents herein, citing them, and each of them, to appear and answer all and singular the matters set forth in this petition and in the libel and intervening libels and in the cross-libel

herein and that third party respondents may be proceeded against as if originally made parties herein and that if said third party respondents cannot be found in this district their [82] goods and chattels within this district may be attached to the amount sued for in the libel and intervening libels herein;

2. That this Honorable Court be pleased to decree that if libelant or any intervening libelant is entitled to a decree then that said decree be entered against third party respondents herein;

3. That this Honorable Court be pleased to decree payment to petitioner of the damages sustained by petitioner aforesaid with interest and costs;

4. That the libel and intervening libels be dismissed as against petitioner with costs;

5. That petitioner have such other and further relief in the premises as to the Court may seem just.

LILLICK, GEARY, McHOSE &  
ADAMS

JOHN C. McHOSE

JAMES L. ADAMS

Proctors for Petitioner

634 South Spring Street,  
Los Angeles, California.

TRinity 3411. [83]

(Duly verified.) [84]

STIPULATION

It Is Hereby Stipulated, by and between the respective undersigned proctors for Hermosa Amusement Corporation, Ltd., and J. M. Andersen, and Nippon Yusen Kabushiki Kaisya, that the foregoing Amended Petition to Bring in Third Party Respondents under Admiralty Rule 56 may be filed.

Dated: May 13, 1941.

ALFRED T. CLUFF  
HUGH B. ROTCHFORD  
GEORGE H. MOORE  
CLUFF & BULLARD

Proctors for Hermosa Amusement Corporation, Ltd., and  
J. M. Andersen.

LILLICK, GEARY, McHOSE  
& ADAMS

JOHN C. McHOSE  
JAMES L. ADAMS

Proctors for Nippon Yusen  
Kabushiki Kaisya.

ORDER

Good cause appearing therefor,

It Is Ordered that petitioner may file the above amended petition, impleading third party respondents above-named under the 56th Admiralty Rule of the Supreme Court.

Dated: May 13, 1941.

BEN HARRISON

United States District Judge

[Endorsed]: Filed May 13, 1941 [85]

[Title of District Court and Cause.]

LIBELANT'S ANSWERS TO INTERROGA-  
TORIES ATTACHED TO ANSWER OF  
CLAIMANT AND RESPONDENT, NIPPON  
YUSEN KABUSHIKI KAISYA

1. Approximately  $3\frac{1}{4}$  nautical miles southwest of Los Angeles breakwater light, bearing approximately  $162^{\circ}$  true from said light.

2. (a) No written or formal notice was ever given. Sometime in April 1940, Captain Andersen asked Inspectors Sullivan and Moody of the Bureau if there was any objection to the "Olympic II" anchoring at Horseshoe Kelp and was informed that there was none.

(b) No request was made by the libelant.

(c) See (a) above. [87]

3. Yes.

(a) Regular ship's bell.

(b) About 14 inches in diameter.

(c) Bell metal or bronze.

(d) Do not know.

(e) On a bracket attached to the forward end of the house, amidships.

(f) A lanyard and rope were attached to the clapper. The operator sounded the bell by pulling on the rope or lanyard, causing the clapper to strike the bell.

(g) Yes. The bell was rung by the watchman, L. R. Ohiser, from 4:30 A. M. until the collision, except when weather conditions did not require it. From 7:00 o'clock A. M. the bell was rung steadily



at minute intervals until the "Sakito Maru" came in sight, and thereafter was rung continuously until a few seconds before the collision.

(h) No tests were made to determine the maximum distance the bell could be heard. When the vessel was lying at Redondo it was observed that the bell could be heard clearly at a distance of one-half mile or thereabouts.

4. The bell was rung as stated in answer to Interrogatory 3-(g).

5. (a) Four persons, excluding the concessionaire and members of his staff, none of whom were employees of the libelant and none of whom had any duties pertaining to the barge.

(b) J. M. Andersen, master; master's license. L. R. Ohiser, watchman; ordinary seaman's papers. Jack Greenwood, barge keeper and deckhand. Joe Culp, bait boy and deckhand. The libelant does not know if the two latter had licenses or seamen's papers.

(c) J. M. Andersen, master. 42 years sea experience. Master since 1920. [88]

L. R. Ohiser. Ordinary seaman's experience on coastwise and offshore vessels.

Jack Greenwood. Employed by libelant about eight months prior to accident. Libelant does not know of any other sea experience.

Joe Culp. Employed by Libelant about two months prior to accident. Libelant has no information as to prior sea experience, if any.

(d) As far as the libelant knows, none of the

three members of the crew had lifeboat certificates.

6. J. M. Andersen, the master, was ashore. L. R. Ohiser, the watchman, was on deck at the bell, ringing the bell and acting as lookout. Greenwood and Culp were about the decks, attending to the passengers.

7. One thwartships bulkhead, about 20 feet aft of the stem.

8. Approximately 1500 tons of sand, gravel and cement blocks.

9. Give the vessel stability and bring her to a proper freeboard.

10. (a) One lifeboat, twenty passengers.

(b) On the house, amidships.

(c) Swinging boom and winch, approved by the Bureau of Inspection and Navigation.

(d) About five minutes.

(e) Two.

(f) April 1940.

11. No.

12. Yes. L. R. Ohiser. At all times after 6:00 o'clock A. M., Ohiser had no duties but to ring the bell and act as lookout. He was stationed at the bell. During the night he was [89] watchman, in general charge of the ship. His duties were to watch out for fires, for unauthorized persons coming aboard, to act as anchor watch, and in foggy weather to ring the bell.

13. Total loss of the "Olympic II", her tackle, apparel, furniture and equipment, \$75,000.00. There was no salvage whatsoever, except the lifeboat, two

anchors and a quantity of chain, and 82 life preservers, which, less the cost of salvage, was of the value of approximately \$412.40.

ALFRED T. CLUFF  
HUGH B. ROTCHFORD  
GEORGE H. MOORE  
CLUFF & BULLARD

Proctors for Libelant. [90]

(Duly verified.)

[Endorsed]: Filed Jul 31, 1941 [91]

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[Title of District Court and Cause.]

ANSWER OF HERMOSA AMUSEMENT CORPORATION, LTD. (LIBELANT HEREIN) AND J. M. ANDERSEN TO AMENDED PETITION OF NIPPON YUSEN KABUSHIKI KAISYA TO BRING IN THIRD PARTY RESPONDENTS.

To the Honorable, the Judges of the United States District Court, for the Southern District of California:

The answer of Hermosa Amusement Corporation, Ltd., libelant herein, and J. M. Andersen, third party respondents, to the amended petition of Nippon Yusen Kabushiki Kaisya, a corporation, to bring in third party respondents, admits, denies and alleges as follows:

I.

Admits the allegations of Articles 1 and 2 of the amended petition. [92]

## II.

Answering the allegations of Article 4 of the amended petition, admits and alleges that the libellant, Hermosa Amusement Corporation, Ltd., at all the times mentioned was the sole owner and operator of the fishing barge "Olympic II"; that J. M. Andersen was her master; denies that any other person was the owner and operator thereof; admits that on or about September 4, 1940 a libel was filed in this cause by Hermosa Amusement Corporation, Ltd., which ever since has been and now is a party to the above entitled suit; admits that intervening libels against the "Sakito Maru" and the petitioner were filed in the said action by the persons, at or about the dates and for the purposes set forth in Article 4 of the amended petition.

## III.

Answering the allegations of Articles 5 and 6 of the amended petition, these third party respondents hereby refer to and incorporate herein the allegations of Articles III and IV of the first amended libel of Hermosa Amusement Corporation, Ltd. and Article IV of the answer of Hermosa Amusement Corporation, Ltd. to the cross-libel of the petitioner herein. These third party respondents deny each and every allegation of Articles 5 and 6 of the amended petition, except as admitted and alleged in the articles of the said first amended libel and the said answer to the cross-libel above incorporated herein by reference; and allege that the true facts and circumstances of the collision and the causes

thereof are as set forth in said Articles III and IV of the said first amended libel.

IV.

Answering Article 7 of the amended petition, these third party respondents refer to and make a part hereof, with like force and effect as if set forth herein at length, the allegation [93] of Article V of the answer of Hermosa Amusement Corporation, Ltd. to the said cross-libel of the petitioner.

V.

Admits the allegations of Article 8 of the amended petition.

VI.

Denies each and every allegation of Articles 9 and 10 of the amended petition.

VII.

Denies that the premises of the petition are true, except as herein admitted or alleged.

Further answering the amended petition, and for a first separate and affirmative defense thereto, the third party respondent, Hermosa Amusement Corporation, Ltd., alleges:

I.

Said third party respondent hereby refers to all the allegations of its first separate and affirmative defense in its answer to the cross-libel of the petitioner herein, and incorporates said allegations in this answer with like effect as if set forth herein at length.



## II.

The amounts claimed by the petitioner and the intervening libelants referred to in Article 4 of the amended petition, exceed the value of the "Olympic II", her tackle, apparel and furniture and freight then pending at the termination of the said adventure and the interest of this third party respondent therein, and this third party respondent claims the benefit of limitation of liability as by the Acts of Congress of the United States provided, and claims to be entitled to limit its liability, if any, to the amount or value of its interest aforesaid in the "Olympic [94] II" and her freight then pending at the time of the termination of the said adventure, as aforesaid.

Wherefore, the Hermosa Amusement Corporation, Ltd. and J. M. Andersen, third party respondents, pray that the amended petition may be dismissed; that these answering third party respondents recover their costs herein; and for such other and further relief as may be meet and proper in the premises.

ALFRED T. CLUFF  
HUGH B. ROTCHFORD  
GEORGE H. MOORE  
CLUFF & BULLARD

Proctors for Third Party Respondents, Hermosa Amusement Corporation, Ltd. and J. M. Andersen. [95]

(Duly verified.)

[Endorsed]: Filed Jul. 31, 1941. [96]

[Title of District Court and Cause.]

ANSWER OF HERMOSA AMUSEMENT CORPORATION, LTD. TO CROSS-LIBEL OF NIPPON YUSEN KABUSHIKI KAISYA.

To the Honorable, the Judges of the United States District Court, for the Southern District of California:

The answer of Hermosa Amusement Corporation, Ltd., libelant and cross-respondent, to the cross-libel of Nippon Yusen Kabushiki Kaisya, admits, denies and alleges as follows:

I.

Admits the allegations of Articles 1, 2 and 3 of the cross-libel, except that the cross-respondent denies that the fishing barge "Olympic II" was formerly a schooner, and alleges, she formerly was a three-masted ship. [97]

II.

Admits that at the time and approximately the place described in Article 4 of the cross-libel, a collision occurred between the "Sakito Maru" and the "Olympic II"; alleges that the recital of the facts and circumstances of the collision in Article 4 of the cross-libel is in large part untrue and falsely alleged; that in respect to many of such allegations the cross-respondent has no knowledge or information so as to enable it to admit or deny the same or allege the true facts, and the cross-defendant therefore denies each and all of the allegations in said

Article 4 contained. The cross-respondent alleges that the true facts and circumstances of the said collision are as set forth in Article III of its first amended libel, as libelant herein, and hereby refers to the allegations of said Article III of the first amended libel and incorporates the same herein with like effect as if set forth herein at length.

### III.

Answering Article 5 of the cross-libel, the cross-respondent denies that at the times mentioned in the cross-libel the "Sakito Maru" was manned by a competent crew or was well or properly navigated, or was maintaining a proper or efficient lookout or was observing all or any of the rules and regulations applicable to a vessel in her situation. Respecting the seaworthiness, equipment and supply of the "Sakito Maru", except in the respects herein specifically denied, the cross-respondent has no knowledge or information, and therefore denies the same and demands strict proof as to the seaworthiness, proper equipment and supply of the "Sakito Maru", if material.

### IV.

Answering the allegations of Article 6 of the cross-libel, the cross-respondent denies that the "Sakito Maru" com- [98] mitted no fault or negligence in the premises of the cross-libel; denies that the cross-respondent or the "Olympic II", or her master or crew, were negligent in any of the respects set forth in said Article 6, or that the collision was

solely or at all due to or proximately caused by carelessness or negligence of the "Olympic II" or her crew or the cross-respondent in any of the respects alleged in the cross-libel or otherwise.

A.

Denies, generally and specifically, each and every allegation of Article 6-A of the cross-libel, and in this connection alleges that the place of anchorage of the "Olympic II" was a well-known fishing ground, well to the westward of the track or steamer lane of vessels approaching Los Angeles Harbor from the south, at which place it was and had been for years customary for vessels to anchor and fish, permanently or from day to day, all of which was or should have been known to the master and officers of the "Sakito Maru".

B.

Admits that the cross-respondent gave no formal or written notice by publication or posting of the place of anchorage of the "Olympic II", and in this connection alleges that the fact that several fishing barges were permanently anchored at said Horseshoe Kelp during the fishing season and that numerous other vessels habitually anchored there to fish from day to day was a matter of common knowledge to navigators of vessels in said waters and had been for several years prior to the collision.

C.

Denies each and every allegation of Article 6-C



of the cross-libel, and in this connection alleges that the "Olympic II" was at all times provided with a proper and adequate bell, and sounded the same as required by law at all appropriate times [99] prior to the collision, and that as the "Sakito Maru" came in sight, the bell was rung loudly and continuously until a collision was imminent.

#### D.

Denies, generally and specifically, each and every allegation of Article 6-D of the cross-libel, except that the cross-respondent admits that the master of the "Olympic II" was ashore at the time of the collision, and that no person licensed as a marine officer by the United States Bureau of Marine Inspection and Navigation was on board at the time of the collision;

#### E.

Denies that the "Olympic II" was in an unseaworthy or unsafe condition in any of the respects set forth in Article 6-E of the cross-libel or otherwise;

(a) Denies that the "Olympic II" was entirely open and unprotected by collision bulkheads; alleges that her hull, decks and collision bulkhead, situated about 20 feet aft of her stem, were tight, staunch and strong in all respects; admits that there were no bulkheads in the lower hold of the "Olympic II" other than an athwartships collision bulkhead about 20 feet aft of her stem;

(b) Denies that the hold of the "Olympic II"



was open or unprotected; admits that 1500 tons of ballast, consisting of rock, gravel and cement blocks were stowed in said lower hold, and alleges that said 1500 tons of ballast constituted approximately one-half the said vessel's deadweight carrying capacity;

(c) Admits that there was carried on board said fishing barge one lifeboat, capable of accommodating 20 persons, which required the operation of a boom and hand winch to lower into the water; admits that the launching of said lifeboat with said boom and winch would occupy approximately five minutes, and [100] in this connection alleges that the lifeboat and launching device were approved by the United States Bureau of Marine Inspection and Navigation.

F.

Denies each and every allegation of Article 6-F of the cross-libel, and in this connection alleges that on or about June 3, 1940 the Bureau of Marine Inspection and Navigation notified the operators of fishing and other pleasure barges, including the cross-respondent, that the said bureau would thereafter consider such barges subject to inspection, and with said notice enclosed a list of general "minimum requirements" consisting of 42 items, including those set forth in Article 6-F of the cross-libel. Said bureau, however, did not require compliance with said minimum requirements by the "Olympic II" or any other fishing or pleasure barge during the season of 1940, and on March 21, 1941, in a

memorandum to the Secretary of Commerce respecting the loss of the "Olympic II", R. S. Field, Director of the Bureau of Marine Inspection and Navigation, stated as follows:

"For some time doubt had existed among officials of the Bureau and of the Department as to the right of the Bureau to inspect anchored barges of a type similar to the 'Olympic' and engaged in a similar business.

Officials of the Bureau and of the Department, therefore, met in conference, and it was decided that such vessels were subject to the inspectional jurisdiction of the Bureau. Thereafter the Bureau issued instructions covering the inspection of these vessels, and the owners were notified accordingly. [101]

It was not deemed equitable, however, to require that the vessels immediately comply with the rigid requirements of inspection, and, therefore, the owners were given a reasonable length of time in which to comply with the requirements placed upon them. This was true in the case of the 'Olympic II'."

#### G.

Denies, generally and specifically, each and every allegation of Article 6-G of the cross-libel, and in this connection alleges that from the time of the collision until the "Olympic II" sank, each of the three members of the "Olympic II's" crew diligently and heroically devoted themselves to equip-

ping the persons on the "Olympic II" with life preservers, and in putting them onto the shore boat and water taxi alongside; whereby the lives of many persons were saved, and because of their exclusive devotion to such activity two of said crew members lost their lives.

## H.

Denies that the "Olympic II" had no proper or sufficient or any lookout, and in this connection alleges that at all times prior to the collision the "Olympic II" had on duty a competent watchman and lookout, properly stationed and attentive to his duties.

## I.

Denies, generally and specifically, each and every allegation of Article 6-I of the cross-libel.

## V.

Admits that as a result of the collision the "Sakito Maru" sustained damage, the extent and amount of which, the re- [102] pairs required therefor, and the time consumed by said repairs are unknown to the cross-respondent. The cross-respondent has no knowledge or information as to the length of time, if any, required for temporary or permanent repair of the damage to the "Sakito Maru", the cost thereof, the time consumed therein, the value, if any, of the use of said vessel, or the maintenance or detention expenses, if any, incurred during any repair period. The cross-respondent therefore denies each and every allegation of Article 7

of the cross-libel, and demands strict proof thereof from the cross-libelant, if material.

## VI.

Denies that the premises of the cross-libel are true, except as herein admitted, but admits the admiralty and maritime jurisdiction of this Honorable Court.

Further answering the cross-libel, and for a first separate and affirmative defense thereto, the cross-respondent alleges:

### I.

At all the times herein mentioned the cross-respondent was the sole owner and operator of the fishing barge "Olympic II".

### II.

On or about September 4, 1940 the "Olympic II", anchored in the waters of the Pacific Ocean at approximately the place in the foregoing answer alleged, and being then and there in every respect seaworthy and properly and efficiently manned, supplied and equipped, and furnished with suitable tackle, apparel and furniture, all in good order and condition, sufficient and efficient for the business and adventure in which she was engaged, took on board approximately eighteen patrons to use her [103] facilities for the purpose of fishing. The cross-respondent had exercised due diligence to make and maintain the "Olympic II", her tackle, apparel, furniture and personnel seaworthy, sufficient and efficient in all the respects necessary for the adventure in which said vessel was engaged.

## III.

Following the collision between the “Olympic II” and the “Sakito Maru”, described in the foregoing answer, the “Olympic II” sank at the place of said collision and terminated her adventure at about 7:15 o’clock A. M. on September 4, 1940.

## IV.

The said collision, and all loss or damage consequent thereon, were not due to any fault or neglect on the part of the cross-respondent or of the “Olympic II”, or of her master and crew, and the same occurred, were done and occasioned without the consent or privity or knowledge or design of the cross-respondent. Nevertheless the cross-libelant herein seeks to recover of the cross-respondent the sum of \$60,000.00, with interest and costs, being alleged damages which the cross-libelant claims to have suffered by reason of the said collision and alleged injury to the motor vessel “Sakito Maru” and loss of her use during repairs. Many other persons have presented claims and filed suits and actions against the cross-respondent or against the cross-libelant, with respect to which last mentioned claims the cross-libelant has impleaded the cross-respondent as third party respondent, and which claims exceed in their aggregate the sum of \$500,000.00.

## V.

Following the said collision the “Olympic II” sank and became, with her tackle, apparel and fur-



niture, a total loss, with no salvage or strippings recovered by the cross-respondent [104] except a lifeboat, certain anchors and chains and life preservers, the reasonable value of which, less the cost of recovering the same, did not and does not exceed the sum of \$412.40. The cross-respondent received from patrons boarding the "Olympic II" on said day the sum of \$3.45 for the use of the facilities of said vessel, and the cross-respondent is informed and believes, and therefore alleges, the freight then pending for said vessel was said sum of \$3.45. The amount claimed by the cross-libelant, as aforesaid, exceeds the value of the "Olympic II", her tackle, apparel and furniture and freight then pending, at the termination of said adventure, and the interest of the cross-respondent therein.

## VI.

While in no way admitting that the cross-respondent or the "Olympic II" is liable for any of the losses and damages alleged to have been suffered by the cross-libelant, or which have been or may be claimed by any other persons as a result of said collision, and hereby claiming and reserving the right to contest in this or any other court any liability therefor, either personal or of the "Olympic II", the cross-respondent claims the benefit of limitation of liability, as by the Acts of Congress of the United States provided, and claims to be entitled to have limited its liability, if any, in the premises, to the amount or value of its interest afore-

said in the "Olympic II" and her freight then pending at the time of the termination of said adventure, as aforesaid.

Wherefore, the cross-respondent prays that the cross-libel of Nippon Yusen Kabushiki Kaisya be dismissed with costs; that the cross-respondent have a decree as prayed for in its first amended libel, and such other and further relief as may [105] be meet and proper in the premises.

ALFRED T. CLUFF,  
HUGH B. ROTCHFORD,  
GEORGE H. MOORE,  
CLUFF & BULLARD,

Proctors for Cross-Respondent,  
Hermosa Amusement Corporation, Ltd. [106]

(Duly verified.) [107]

[Endorsed]: Filed Jul. 31, 1940. [108]

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[Title of District Court and Cause.]

NOTICE OF MOTION FOR CONTINUANCE  
OF TRIAL

To: Hermosa Amusement Corporation, Ltd., a Corporation, and J. M. Andersen, and to Their Proctors, Alfred T. Cluff, Hugh B. Rotchford, George H. Moore, and Cluff & Bullard, Esq.;  
Grace E. Mayo, Individually and as Administratrix of the Estate of Roy A. Mayo, Deceased, and

to Her Proctors, Wayland & Stearns, Esqs., and to Frank F. Mayo, Individually and as Administrators of the Estate of Roy A. Mayo, Deceased, and to His Proctor, David I. Lippert, Esq.;

George W. Berger and to His Proctor, Perry G. Briney, Esq.; [109]

Lena Karsh, Administratrix of the Estate of Joseph Karsh, Deceased, and to Her Proctors, Edw. C. Purpus and Charles C. Montgomery, Esqs.;

International Broadcasting Company, a Corporation, and to Its Proctor, David A. Fall, Esq.;

Elwood Johnson and Albertine K. Johnson, and to Their Proctor, Gladys Towles Root;

Norma Rubin, Lena Karsh and Florence, Lillian and Shirley Rose Karsh, by Lena Karsh, Their Guardian ad litem, and Their Proctors, Edw. C. Purpus and Charles C. Montgomery, Esqs.;

And to: John Gilbert Montgomery, by His Guardian ad litem, Margerie L. Montgomery, and to His Proctors, Phi O. Clough and David A. Fall, Esqs.:

Please take notice that Nippon Yusen Kabushiki Kaisya, a corporation, respondent, claimant, cross-libelant and petitioner herein, will, on Monday, September 8, 1941, at 10 o'clock A. M., or as soon thereafter as counsel can be heard, in the courtroom of

Honorable Ben Harrison, Judge, move the court to continue the trial of the above-entitled cause, presently set for trial on September 16, 1941, until the testimony of certain necessary witnesses can be obtained by deposition.

Said motion will be based on the affidavit of James L. Adams, hereto attached, the attached memorandum of points and authorities, and the records and files of this cause, and will be made on the ground that certain necessary witnesses cannot be present to testify upon the date this cause is now set [110] for trial and that their testimony by way of deposition is not obtainable prior to such date.

Dated September 2, 1941.

LILLICK, GEARY, McHOSE &  
ADAMS,  
JAMES L. ADAMS,  
REID R. BRIGGS,

Proctors for Nippon Yusen  
Kabushiki Kaisha, Re-  
spondent, Claimant, Cross-  
Libelant and Petitioner.

Good cause appearing therefor, it is

Ordered, That the foregoing notice may be served, personally or by mail, on or before September 3, 1941.

Dated: September 3, 1941.

BEN HARRISON,  
District Judge. [111]

## AFFIDAVIT OF JAMES L. ADAMS

State of California,  
County of Los Angeles—ss.

James L. Adams, being first duly sworn, deposes and says:

That he is one of the proctors for Nippon Yusen Kabushiki Kaisya, a party to the within cause; that shortly after the within cause was set for trial at the call of the term trial calendar in February, 1941, affiant undertook to ascertain the whereabouts of various crew members aboard the Motor Vessel "Sakito Maru" who are witnesses on various phases of the collision between the Motor Vessel "Sakito Maru" and the Fishing Barge "Olympic II" which occurred on September 4, 1940; that affiant was thereafter informed by Nippon Yusen Kabushiki Kaisya that only three of such witnesses were presently aboard the Motor Vessel "Sakito Maru" and that upon the receipt of such information affiant made immediate arrangements to take the depositions of those witnesses upon the arrival of the "Sakito Maru" at Los Angeles Harbor on June 4, 1941; that on such occasion the depositions of T. Yokota, First Officer, G. Kato, Chief Engineer, and S. Shimada, Lookout, were taken.

That affiant was advised by Nippon Yusen Kabushiki Kaisya of the following whereabouts of the following witnesses:

S. Sato, Master.

Due to arrive as passenger on board M. S.



“Kamakura Maru” at Los Angeles Harbor on September 6 so as to be available for trial on September 16, 1941. [112]

T. Karasuda, First Engineer.

Employed aboard M. S. “Kamakura Maru” and available for deposition at Los Angeles Harbor upon arrival September 6, 1941.

A. Kanda, Apprentice Officer.

Resigned from the employ of Nippon Yusen Kabushiki Kaisya and availability for depositions in Japan or elsewhere uncertain.

H. Aono, Quartermaster.

K. Mamba, Quartermaster.

To be sent from Japan to Los Angeles as crew members on board some vessel due to arrive prior to September 16, 1941, so as to be available for depositions.

E. Yokoyama, Apprentice Sailor.

Employed on board S. S. “Rakuyo Maru”, due to arrive Los Angeles Harbor on August 26, 1941, and available for deposition at that time.

N. Nakumura, Electrical Engineer.

Employed on board M. S. “Maruta Maru”, scheduled to arrive at Los Angeles Harbor on July 23, 1941, and available for deposition at that time.

That in accordance with the above information, affiant made plans to obtain the testimony by way of depositions of the witnesses named above at the times and on the occasions indicated above, with the

exception of the testimony of Captain Sato, who has been and still is expected to be present at the time of the trial; that due to the change in relations between the United [113] States of America and the Empire of Japan prior to the time depositions could be scheduled for any of the witnesses named above, the sailings of all of the vessels mentioned above were altered or cancelled and subsequently all Japanese vessels were withdrawn from trade with the United States of America; that as a consequence none of the witnesses whose depositions were scheduled to be taken on the occasions mentioned above were made available for such purpose as previously expected and that it became and now is impossible to obtain the depositions of said witnesses in the United States of America prior to the trial of the within cause scheduled for September 16, 1941, and that it likewise became and is now impossible to arrange for the attendance of such persons as witnesses at such trial; that through the diversion of a vessel of Nippon Yusen Kabushiki Kaisya on a voyage from Japan to South America to a Mexican port, special arrangements have been made for Captain Sato to be transported by airplane from such Mexican port to Los Angeles so as to arrive here on September 16, 1941, or a day or two thereafter.

That the testimony of such unavailable witnesses is material to the case of Nippon Yusen Kabushiki Kaisya in the within cause in the manner hereinafter indicated: that T. Karasuda, First Engineer, was the engineer on watch in the engine room of

the "Sakito Maru" at the time of and for some time prior to the collision and would testify to the receipt of various orders from the bridge of said ship by means of the ship's telegraph, to the execution of such orders and to the speed of the vessel at times pertinent to the collision; that A. Kanda, Apprentice Officer, was on the bridge at the time of the collision and for several hours prior thereto and would [114] testify as to the bearings taken to fix the position of the vessel as the vessel approached Los Angeles Harbor, to the conditions of the weather, to the sounding of fog signals by the "Sakito Maru", to the entries made in the deck memorandum pad maintained on the bridge concerning the events of the collision, to the sighting of the barge and to the events that occurred thereafter; that A. Aono, Quartermaster, was at the wheel at the time of the collision and would testify as to the orders given to him by Captain Sato and to the execution of such orders by himself; that K. Namba, Quartermaster, was at the wheel from 4 to 5 A. M. and from 6 to 7 A. M. on September 4, 1940, and would testify as to the course steered by him, as to being near the forecastle head at 7 A. M. and several minutes thereafter and as to not hearing any fog signals from any other vessels prior to the collision, as to hearing the warning sounded by the lookout at the bow of the "Sakito Maru", as to the hearing of fog signals sounded by the "Sakito Maru" at regular intervals and as to the conditions of the weather; that E. Yokoyama, Apprentice Sailor, was on the forecastle head of the "Sakito

Maru'' after 6:30 A. M. on September 4, 1940, and would testify as to hearing the first fog signals sounded by the "Sakito Maru" and as to standing lookout on the platform at the bow after hearing such signals for a minute or two until relieved by S. Shimada, as to remaining on the forecastle head, as to not hearing any fog signals from any other vessel, as to hearing the fog signal of the "Sakito Maru" being sounded at regular intervals and as to conditions of the weather; that N. Nakamura, Electrical Engineer, was in the engine room of the "Sakito Maru" after 7 A. M. on September 4, 1940, and would testify that he made all the entries of orders received from the bridge in the signal book after the standby order of 7:03 and until 7:11 A. M. [115]

That affiant is informed and believes and upon such information and belief alleges that unless the trial of the within cause is continued until the depositions of such presently unavailable witnesses can be obtained in Japan or elsewhere, the case of Nippon Yusen Kabushiki Kaisya in said cause will be materially prejudiced.

JAMES L. ADAMS.

Subscribed and sworn to before me this 2nd day of September, 1941.

[Seal]

BERNA WADDELL,

Notary Public in and for the  
County of Los Angeles,  
State of California.

My Commission Expires February 4th, 1945.

[Endorsed]: Filed Sep. 4, 1941. [116]



[Title of District Court and Cause.]

ANSWER OF HERMOSA AMUSEMENT CORPORATION, LTD. AND J. M. ANDERSEN, RESPONDENTS AND THIRD PARTY RESPONDENTS, TO INTERVENING LIBELS.

To the Honorable, the Judges of the United States District Court, for the Southern District of California:

Answering the several libels in intervention and amended libels in intervention filed herein, these respondents and third party respondents allege: [117]

Libel in Intervention and Amendment to Libel in Intervention of Albertine K. Johnson; Elwood Johnson, individually and as Administrator of the Estate of Curtis Elwood Johnson, Deceased.

I.

These respondents allege that they have no knowledge or information as to the following matters and things alleged in the libel in intervention or the amendment thereto, and therefore deny each and all of the same, and demand strict proof thereof from the libelants in intervention.

All the allegations of Articles I, V and VI of the first cause of libel set forth in said libel in intervention; that the said Curtis Elwood Johnson lost his life as a result of the said collision; that the



said Elwood Johnson sustained injuries, physical or mental, as a result thereof; that the said Curtis Elwood Johnson or Elwood Johnson, or either of them, were passengers on board the barge "Olympic II", or that the libelants in intervention or the estate of Curtis Elwood Johnson have been damaged in any sum whatsoever.

## II.

These respondents deny each and every allegation of Articles III and IV of the so-called first alternative cause of libel set forth in the said amendment to libel in intervention, except that these respondents admit that the said barge "Olympic II" had no bulkheads in her lower hold from a point 20 feet aft of her stem to her stern, and that it required a boom and winch to raise and lower a lifeboat into the water from said barge, which operation would consume five minutes or thereabouts.

## III.

These respondents allege, upon information and belief, that if the said Curtis Elwood Johnson met his death by reason of the said collision or if the libelant in intervention, Elwood [118] Johnson, sustained personal injuries, incurred expenses or lost property as a result thereof, the same and all thereof were caused or contributed to by the fault, negligence and lack of due care of the said Curtis Elwood Johnson and of the said Elwood Johnson in respects not now known to these respondents, but as to which

these respondents will offer proof when ascertained and ask leave to amend this answer accordingly.

Amended Libel in Intervention of Grace E. Mayo  
and Frank F. Mayo

I.

These respondents allege that they have no knowledge or information as to the following matters and things alleged in the amended libel in intervention, and therefore deny each and all of the same, and demand strict proof thereof from the libelants in intervention:

All the allegations of Articles Second, Third, Eighth and Fourteenth of the first cause of libel; Article Third of the second cause of libel; that the said Roy A. Mayo was a passenger on board the said barge or met his death as a result of the collision; and that the libelants in intervention, or either of them, or the estate of the said Roy A. Mayo, deceased, suffered damages in any sum whatsoever.

II.

These respondents deny that by reason of the neglect or fault of the master or owner of the barge "Olympic II" or of these respondents, the same was at the time and place of the said collision in an unseaworthy condition, or that the same was at said time and place, or otherwise, negligently maintained or operated. [119]

III.

These respondents allege, upon information and

belief, that if the said Roy A. Mayo came to his death as a result of the said collision, or either of the libelants in intervention suffered damages or incurred expenses as a result thereof, the same and all thereof were caused or contributed to by the fault, negligence and lack of due care of the said Roy A. Mayo in respects not now known to these respondents, but as to which these respondents will offer proof when ascertained and ask leave to amend this answer accordingly.

Intervening Libel of Lena Karsh, Administratrix  
of the Estate of Joseph Karsh, Deceased.

### I.

These respondents allege that they have no knowledge or information as to the following matters and things alleged in the intervening libel, and therefore deny each and all of the same, and demand strict proof thereof from the intervening libelant:

All the allegations of Article I of the intervening libel; that the libelant in intervention or the estate of the said Joseph Karsh, deceased, or the widow and children of the said deceased, or any of them, suffered damage, general or special, in any sum whatsoever.

### II.

These respondents admit that the said Joseph Karsh was on board the barge "Olympic II" at the time of the said collision and met his death as a result thereof.

## III.

These respondents allege, upon information and belief, that the death of said Joseph Karsh, and the damages, if any, [120] suffered, and the expenses, if any, incurred by the intervening libelant or the persons named in the intervening libel, and all thereof, were caused or contributed to by the fault, negligence and lack of due care of the said Joseph Karsh in respects not now known to these respondents, but as to which these respondents will offer proof when ascertained and ask leave to amend this answer accordingly.

## Intervening Libel of Norma Rubin, et al.

## I.

These respondents allege that they have no knowledge or information as to the following matters and things alleged in the intervening libel, and therefore deny each and all of the same, and demand strict proof thereof from the intervening libelants:

All the allegations of Article I of the "First Count on behalf of Norma Rubin", (except that these respondents admit that the said Joseph Karsh met his death as a result of the said collision); that the intervening libelant, Norma Rubin, lost, as a result of the said collision, any of the moneys and property described in Articles III and V of the said "First Count", or that she suffered general or special damages as a result of the said collision in any of the sums alleged in the said "First Count", or in any sum whatsoever.

All of the allegations of Article I of the "Second Count on behalf of Lena Karsh and Florence, Lillian and Shirley Rose Karsh by Lena Karsh, their guardian ad litem", (except that these respondents admit that the said Lillian Karsh and Shirley Rose Karsh were on board the "Olympic II" at the time of the collision).

All the allegations of Articles III, IV, V and VI of the said "Second Count". [121]

All of the allegations of Article II of the "Third Count on behalf of Lillian and Shirley Rose Karsh, by their mother and guardian ad litem, Lena Karsh".

## II.

These respondents allege, upon information and belief, that the death of the said Joseph Karsh was caused or contributed to by the fault, negligence or lack of due care of the said Joseph Karsh in respects not now known to these respondents, and that if any of the intervening libelants suffered injuries or damages or incurred expenses or lost property by reason of the said collision, the same and all thereof were caused or contributed to by the fault, negligence and lack of due care of the said Joseph Karsh and of the said libelants in intervention, and each of them, in respects not now known to these respondents. In respect to said faults, negligence and lack of due care these respondents will offer proof when ascertained and ask leave to amend this answer accordingly.



Intervening Libel of John Gilbert Montgomery, by his Guardian Ad Litem, Margerie L. Montgomery.

### I.

These respondents allege that they have no knowledge or information as to the following matters and things alleged in the intervening libel, and therefore deny each and all of the same, and demand strict proof thereof from the intervening libelant:

All of Articles Ninth, Eleventh and Twelfth of the intervening libel, and that as a result of the collision the intervening libelant was thrown from the barge "Olympic II" into the water or sustained the injuries alleged in the libel in intervention. [122]

### II.

These respondents deny that they, or either of them, negligently manned or operated the barge "Olympic II"; that the barge or either of these respondents failed to give proper signals; deny that the "Olympic II" was anchored in the regular steamship lanes off the port of Los Angeles or was otherwise improperly anchored; admit that these respondents did not "advise or publish" the "Olympic II's" place of anchorage; and deny that the alleged or any fault, carelessness or neglect of these respondents, or either of them, or the barge "Olympic II" caused or contributed to the collision or to the alleged injury or damage to the intervening libelant.

## III.

These respondents allege, upon information and belief, that if the said John Gilbert Montgomery suffered injuries by reason of the said collision, the same and all thereof were caused or contributed to by the fault, negligence and lack of due care of the said John Gilbert Montgomery in respects not now known to these respondents, but as to which these respondents will offer proof when ascertained and ask leave to amend this answer accordingly.

Libel in Intervention of George W. Berger.

## I.

These respondents allege that they have no knowledge or information as to the character and value of the radio equipment on board the "Olympic II" at the time of the collision or of the labor, if any, expended thereon by the libelant in intervention, and therefore deny that the value of the said radio broadcasting equipment and supplies was the sum of \$18,000.00, or any other sum, or that the intervening libelant expended labor in the in- [123] stallation of the same to the extent of \$2500.00, and demand strict proof of such allegations of the intervening libelant; admit all the other allegations of Article II of the libel in intervention.

## II.

Deny, for lack of information and belief, as aforesaid, that the libelant in intervention has been damaged in the sum of \$20,500.00, or any other sum.

Libel in Intervention of International Broadcasting Company, a corporation.

I.

These respondents allege that they have no knowledge or information as to the following matters and things alleged in the libel in intervention, and therefore deny each and all of the same, and demand strict proof thereof from the libelant in intervention:

All the allegations of Articles Fifth and Seventh of the libel in intervention, except that these respondents admit that certain radio equipment was on board the "Olympic II" at the time of the collision and was lost with the said vessel.

Further answering each and all of the said libels and amended libels in intervention, these respondents allege:

I.

Admit that at the times mentioned in the said libels and amended libels in intervention, Hermosa Amusement Corporation, Ltd. was the sole owner and operator of the fishing barge "Olympic II"; that J. M. Andersen was the master thereof; that on September 4, 1940 said barge was anchored at a point in the Pacific Ocean approximately 3½ miles southeast of the west [124] breakwater light, Los Angeles Harbor, bearing 162° true therefrom, and was there engaged in the business of furnishing fishing facilities to patrons for hire; that on September 4, 1940, at about 7:10 A. M., the "Olympic II"

was run down and sunk by the respondent motor vessel "Sakito Maru" with the loss of several lives.

## II.

These respondents admit that the collision, and all loss of life and injury and damage to persons and property resulting from the said collision, were solely due to the fault, neglect and lack of due care of the respondent motor vessel "Sakito Maru", her owners, operators, master, officers and crew, in the several respects set forth in the libels in intervention and amended libels in intervention herein, and in other respects which these respondents will prove at the trial. For a more particular statement of the facts and circumstances of the said collision, and of the faults, negligence and lack of due care on the part of the respondent motor vessel "Sakito Maru", her owners, operators, master, officers and crew, these respondents refer to and make a part hereof, as if set forth herein at length, the allegations of Articles III and IV of the first amended libel of Hermosa Amusement Corporation, Ltd. filed herein.

## III.

These respondents allege that on September 4, 1940 the "Olympic II", owned and operated by the respondent, Hermosa Amusement Corporation, Ltd., was anchored at the place aforesaid, and was engaged in the business and adventure of furnishing fishing facilities to patrons; and that the said owner respondent used due diligence to make and maintain

the said "Olympic II", her equipment and personnel in all respects seaworthy, sufficient and efficient for the purpose and adventure in which she was engaged. [125] Following the collision the "Olympic II" sank and became and remains, with her equipment, a total loss, and the said adventure terminated at or about 7:15 A. M. on September 4, 1940 at the place of anchorage aforesaid. The value of the strippings of the "Olympic II" and of her freight then pending and of the interest of the said owner respondent therein did not and does not exceed the sum of \$415.85. The amount claimed by each of the intervening libelants herein exceeds the value of the said owner respondent's interest in the said "Olympic II" and her freight then pending, and other suits, claims and demands arising out of the said collision are being asserted against the said owner respondent in sums aggregating more than \$500,000.00. The said collision and all loss and damage consequent thereon were done and occasioned without the consent or privity or knowledge or design of the said owner respondent, and, without admitting any liability for any consequences of the said collision, said owner respondent claims the benefit of limitation of liability as by the Acts of Congress of the United States provided.

Wherefore, these respondents pray that the libels in intervention and amended libels in intervention be dismissed as to these respondents, with costs to these respondents, and that these respondents have



such other and further relief as in law and justice they may be entitled to receive.

ALFRED T. CLUFF  
HUGH B. ROTCHFORD  
GEORGE H. MOORE  
CLUFF & BULLARD

Proctors for Respondents and  
Third Party Respondents,  
Hermosa Amusement Cor-  
poration, Ltd. and J. M.  
Andersen.

403 West 8th Street  
Los Angeles, Calif.  
VAndike 9183. [126]

(Duly verified.)

[Endorsed]: Filed Sep 15, 1941. [127]

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[Title of District Court and Cause.]

AMENDMENT TO AMENDED PETITION TO  
BRING IN THIRD PARTY RESPOND-  
ENTS UNDER ADMIRALTY RULE 56.

To the Honorable Judges of the United States Dis-  
trict Court for the Southern District of Cali-  
fornia:

Petitioner Nippon Yusen Kabushiki Kaisya  
amends its Amended Petition to Bring in Third  
Party Respondents under Admiralty Rule 56 by

adding the following at the end of paragraph 5 thereof:

“and that on or about August 28, 1941, a libel in intervention was filed by S. T. Elliott, for personal injuries and property damage.”

LILLICK, GEARY, McHOSE &  
ADAMS

JAMES L. ADAMS

REID R. BRIGGS

Proctors for Petitioner [128]

(Duly Verified.)

[Endorsed]: Filed Sep 19, 1941 [129]

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District Court of the United States  
Southern District of California  
Central Division

At a Stated Term, to wit: The September Term, A. D. 1941 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 8th day of September, in the year of our Lord one thousand nine hundred and forty-one.

Present: The Honorable Ben Harrison, District Judge.

Nos. 1138, 1146, 1147, 1149, 1148, 1154, 1155, 1296-BH Adm.

[Title of Causes.]

[139]

These causes coming on for hearing motion of Nippon Yusen Kabushiki Kaisya, a corporation, respondent, claimant, cross-libelant and petitioner, filed September 4, 1941, in each of the above-entitled causes, for continuance of trial, now set for September 16, 1941; Alfred T. Cluff, Esq., appearing as counsel for the Hermosa Amusement Corporation, Ltd. and J. M. Anderson; F. L. Stearns, Esq., appearing as counsel for Grace E. Mayo, etc.; David I. Lippert, Esq., appearing as counsel for Frank F. Mayo, etc.; H. C. Velpman, Esq., appearing as counsel for Elwood Johnson and Albertine K. Johnson; H. C. Eastham, Esq., appearing as counsel for Roger Culp, etc.; Chas. E. Millikan, Esq., of Messrs. Wright and Millikan, appearing as counsel for Wilma Greenwood; Claude F. Weingand, Esq., counsel for L. R. Ohiser, being absent; Attorney Reay of Messrs. Reay, Scharf, counsel for J. Eldon Anderson being absent; Harvey R. McKee, Esq., appearing as counsel for Wilfred Rasmussen; James L. Adams and Reid R. Briggs, Esqs., appearing as counsel for Nippon Yusen Kabushiki Kaisya, Respondent, etc.; Perry G. Briney, Esq., appearing as counsel for G. W. Berger; E. C. Purpus, C. C. Montgomery, Sr. and C. C. Montgomery, Jr., Esqs., appearing as counsel for Lena Karsh, etc., Norman Rubin, et al.; David A. Fall, Esq., appearing as counsel for International Broadcasting Company; David A. Fall, Esq., appearing as counsel for John G. Montgomery, etc.; Geo. Harnagel, Esq., appearing as counsel for Helen McGrath, etc.; R. Virgil

Allen, Esq., appearing as counsel for Lucy Sylvester; and A. H. Bargion, Court Reporter, being present and reporting the proceedings:

Attorney Adams makes a statement in support of said motion for a continuance, and Attorney Cluff makes a statement.

Attorney Adams presents written statements of T. Karasuda, A. Kanda, H. Aono, K. Nanba, E. Yokoyama, and M. Nakamura, witnesses, as to what they would testify to if called by the respondent Nippon Yusen Kabushiki Kaisya, a corporation, in the above causes, and requests that same be filed herein, and each of the counsel appearing as shown, except absent counsel, stipulating that said witnesses would so testify, if the transcript of the testimony of the three witnesses of respondent before the "A" Board is included, and Attorney Adams states that he is willing to make the transcript before said "A" Board a part of the record. [140]

Attorney Adams argues further in support of motion for a continuance, and makes a statement of what he expects to be able to prove in support of said motion for continuance.

The Court makes a statement and orders said motion for continuance denied without prejudice except as to those libelants whose counsel have not stipulated as to the testimony of the witnesses above referred to, and if their counsel does not so stipulate within forty-eight hours the Court will continue those cases [141]

\* \* \* \* \*

[Title of District Court and Cause.]

### OPINION

This action is a consolidation of various libels and claims arising out of the collision on September 4, 1940, of the Motor Vessel "Sakito Maru", and the fishing vessel "Olympic II", wherein seven and possibly eight persons lost their lives. The present trial was restricted to the sole issue of liability. Naturally, each vessel accuses the other and excuses itself.

The Motor Vessel "Sakito Maru" is a modern merchant vessel engaged chiefly in the transportation of cargo and is powered by two Diesel engines. The dimensions of the "Sakito Maru" are as follows: [142] Length overall 154½ meters or 506.76 feet; length between perpendiculars 145 meters or 465.60 feet; breadth 19 meters or 62.32 feet; gross tonnage 7,126.32 tons; net tonnage 3,900.09 tons.

The distance between the bridge and the bow of the "Sakito Maru" is 65 meters or 213.20 feet. At the time of the collision, the draft of the vessel was 24 feet 7 inches forward and 27 feet 11 inches aft. Loaded as she was at that time, the bridge was about 52 or 53 feet above the waterline.

The vessel is equipped with a gyro compass, located in the wheelhouse and used for steering, and three magnetic compasses, the first also located in the wheelhouse, the second on the flying bridge over the wheelhouse, and the third on the poop deck. A gyro compass consists of a rapidly spinning rotor



so swung as to maintain its axis in the geographical meridian in pointing to the true north. The gyro compass aboard the "Sakito Maru" has no correction and the course shown on it is a true course. The gyro compass is also equipped with a course recorder so that the course of the vessel is recorded on a graph which shows the heading of the vessel, in degrees of the compass, at any and all times. This recorder works automatically.

The "Olympic II" was built of iron in 1877 at Belfast, Ireland; and was originally rigged as a sailing ship known as the "Star of France". In 1933 her three masts were cut down or dismantled in part, and she was converted into the condition in which she was on the day of the collision and was thereafter referred to as a fishing barge. Her dimensions were as follows: Length 238 feet; breadth 38 feet, depth 22 feet; gross tonnage 1,766 tons; net tonnage 1,514 tons. The "Olympic II" was not self-propelled. She had one iron bulkhead which extended athwartships about 20 feet aft of the stem, which met the test for sailing vessels. (see Sec. 65, Rule III, Coastwise Rules). At the time of the collision there were stowed in her hold 1,500 tons of sand, gravel and cement blocks to minimize motion and to add to the comfort of her patrons, and her draft was about 17 feet forward [143] and 17 feet 2 inches aft. She was anchored or moored at that time fore and aft.

At the time of the collision which occurred at about 7:10½ o'clock A. M. on September 4, 1940, the "Olympic" was anchored on a fishing bank com-

monly known as "Horseshoe Kelp", about 3.3 nautical miles in a direction approximating 160 degrees true from the lighthouse, at the end of the west breakwater at the entrance of Los Angeles Harbor and in an area that occasionally is affected by fog.

"Horseshoe Kelp" is and has been for many years known as a fishing ground or bank that attracts a large number of both sport and commercial fishermen. At the height of the season fishing crafts of every description may be found and the number often runs in excess of 100.

For several years last past old vessels have been towed to this fishing ground and there anchored and used as floats from which people can fish. Persons desiring to fish are taxied on shore boats and pay a small fee for an opportunity to enjoy this form of recreation. These boats used as floats are commonly referred to as fishing barges.

On September 4, 1940, beside the "Olympic", two other vessels known as the "Point Loma" and the "Rainbow" were moored in the same general vicinity. The distance between the "Olympic" and the "Point Loma" was 400 yards; between the "Point Loma" and the "Rainbow" 1600 yards; and between the "Olympic" and the "Rainbow" 1800 yards. Cross bearings indicate the "Rainbow" was 144 degrees true, three miles from Los Angeles Lighthouse and the "Point Loma" bore 159 degrees true, three miles from Los Angeles Lighthouse.

The "Olympic", and the time of the collision, was anchored in the open sea and not in or in the

vicinity of any channel or fairway. She was surrounded by miles of navigable waters. Ships leaving Los Angeles Harbor headed south passed in the close proximity of the "Olympic". This was also true of ships entering the harbor from the [144] south. Vessels leaving Los Angeles Harbor for southern ports customarily followed a course varying from 160 degrees true to 162 degrees true. While those approaching from the south usually followed a course of 340 degrees true.

The "Sakito Maru" at the time of the collision was on a voyage from New York to Yokahama, via the Panama Canal and Los Angeles Harbor. Until immediately prior to the collision and since noon, September 3, 1940, the "Sakito Maru" steered a course of 340 degrees true. The first officer went on watch at 3:55 o'clock A. M. and with him on watch were an apprentice officer and two quartermasters, one of whom acted as helmsman, while the other stood lookout, on the bridge. A lookout was also maintained at the bow until daylight. At 5:20 o'clock A. M. a one-point bearing was taken from the south end of Santa Catalina Island. This bearing was followed by three two-point bearings, taken from the southeast end of Santa Catalina Island and from Long Point on Santa Catalina Island. Another two-point bearing was taken at 5:58 o'clock A. M. and still another two-point bearing at 6:08 o'clock A. M. At 6:28 o'clock A. M. a one-point bearing was taken on the southeast end of Santa Catalina Island. These various bearings fixed the

position of the vessel and the same was marked from time to time on the navigating chart.

If the "Sakito Maru" had followed her plotted course, she would not have passed over the fishing grounds and all would have been serene, but due to the influences of wind, current, tide or the usual inaccuracies in steering she varied sufficiently from the plotted course to bring her directly into "Horse-shoe Kelp". It will, therefore, be observed that she had plotted her course so as to avoid said fishing grounds. Of course, there is no evidence indicating she was intentionally endeavoring to avoid said fishing grounds.

The master of the "Sakito Maru" was called to the bridge at 5:58 o'clock A. M., at which time he was told of the position of the vessel. He returned to his quarters, but, pursuant to further in- [145] structions, was called again to the bridge at 7:00 o'clock A. M. Up until that time the weather had been good with clear visibility. The engines of the vessel were set and had been set full ahead and she was proceeding at a speed of 16 knots. At about 7:00 o'clock A. M. it could be seen that it was misty some distance ahead, although visibility on the port and starboard sides of the ship remained good. Visibility ahead at that time was estimated by Captain Sato, before recess, at three miles, and after recess, at one mile. At 7:03 o'clock A. M. an order of slow ahead on the engines was given and promptly executed.

One of the controversial questions in this liti-



gation is the extent of visibility at and just prior to the collision. All witnesses admit that the morning was foggy but the extent of visibility varies from 200 meters to a mile and over. Fortunately, the court has had the benefit of the testimony of a number of disinterested witnesses. While these witnesses gave their estimates, they were not mere guesses because of the location of the "Point Loma" and "Rainbow", which gave them markings to tie into. They also were able to give estimates compared with the length of the "Sakito Maru". From such testimony, I am of the opinion, that the "Olympic" was clearly visible to a person standing in the bow of the "Sakito Maru" for at least 1800 feet. One of the disinterested witnesses produced by the "Sakito Maru" was William H. Collins, Master of the salvage tug "Ray R. Clark", who holds both an operator's and pilot's license for San Pedro and Long Beach area. He has owned boats since 1906 and has spent most of his time on the waters of Los Angeles Harbor. He testified as follows:

"By the Court: How far was the "Point Loma" from the "Olympic"?"

"A. Well, I would say around 1200 feet—1,000 or 1200 feet, is what I would say.

"Q. How far was the "Sakito Maru" from the "Olympic" when you first saw it? [146]

"A. Approximately the same distance; the other side of him maybe not quite as far. Distances on the water, as I have found after many years, are very, very deceiving. I have started



out a thousand times to run a line over to something, and found out that I did not have enough.

“Q. In other words, you generally underestimate than over?

“A. Usually, because you will say, ‘I have got 1200 feet of line, and that will reach over there’, and you roll it out, and when you reach the end it still doesn’t make it.”

This testimony and other of like character has satisfied me that Captain Sato’s estimate of 200 meters cannot be reconciled, even with his previous estimates and that of his first officer, who estimated the visibility at 7:09 o’clock A. M. to be about 600 meters. In fact, the court is given little help from those on board of the “Sakito Maru”. Outside of the testimony of Captain Sato and the first officer, T. Yokota, no one gave even an estimate of visibility. The lookout, S. Shimada, who had three years sea experience, did not know how far the “Olympic” was from the “Sakito Maru” when he first sighted her.

Other evidence that controverts the Captain and the first officer of the “Sakito Maru” is the fact that many witnesses, when they saw the “Sakito Maru”, were not alarmed, because they felt she was going to miss the “Olympic” and had no realization of danger until the “Sakito Maru” was very close when she seemed to change her heading. For instance, take the testimony of Elwood Johnson, a fisherman on the “Olympic” and libelant on account of the death of his son as a result of the collision,

who testified that when he first saw the "Sakito Maru" he had just cast his line out, not having any apprehension of danger, continued to let his line out until it was out approximately 200 yards. He continued fishing and watching the ship until the "Sakito Maru" appeared to turn toward the "Olympic", [147] then thinking the "Sakito Maru" was going to cross his line, reeled it in and when he realized a collision was imminent, ran 12 feet and grabbed hold of the rail. Another example is found in the testimony of Leonard Smith, who had time to run his water taxi from alongside the "Point Loma" to within a point of the bow of the "Olympic", after the "Sakito Maru" came into sight. T. Yokota saw people fishing on the "Olympic" when he first saw her and the lookout testified to the same effect. This testimony corroborates the witnesses who had no realization of danger and further indicates the fog was not very thick. It further indicates that the "Olympic" should have been sighted long before the lookout could discern people on her deck fishing.

Almost without exception witnesses on the "Olympic" and nearby boats, when they first saw the "Sakito Maru", thought she was going to pass them by until all of a sudden she seemed to change her heading toward the "Olympic". The records of the "Sakito Maru" and Captain Sato's testimony establish the fact that when the lookout gave warning of the presence of the "Olympic", a full starboard order was given, and the "Sakito Maru" was ac-

tually responding to such order at the time of the impact. This fact convinces me that many witnesses saw the "Sakito Maru" long before her lookout discovered the presence of the "Olympic", and long before Captain Sato gave the full starboard order.

Evidence also further discloses that the fog was tending to lift at the time of the collision and the bright sun of early September was breaking through and dissipating the fog. The season of the year would negative a dense fog.

I consider the testimony received from the personnel of the "Sakito Maru" very unsatisfactory. The Captain testified that at 7:00 o'clock A. M. his estimate was three miles, which he later changed to one mile. The first officer testified visibility at 7:00 o'clock A. M. was three miles. At 7:09 o'clock A. M. the first [148] officer testified visibility was 600 meters. Other members of the crew would not or could not give an estimate.

The first fault charged by the "Olympic" against the "Sakito Maru" is immoderate speed. In attempting to arrive at the speed of the "Sakito Maru", I have disregarded the testimony of all eye witnesses who attempted to judge the speed and have accepted the evidence furnished by the "Sakito Maru". The testimony of Captain Sato and the first officer, is that the "Sakito Maru" was proceeding at her normal cruising speed of 16 miles per hour up to 7:00 o'clock A. M. At 7:03 o'clock A. M. she encountered fog ahead and reduced her speed to 6½ miles per hour; that it required three min-

utes for her speed through the waters to decelerate to  $6\frac{1}{2}$  miles per hour. At 7:09 o'clock A. M. the lookout reported the presence of the "Olympic" ahead. That at that time the "Olympic" was 200 meters ahead. At 7:09 o'clock A. M. the engines were reversed and at 7:10 $\frac{1}{2}$  o'clock A. M. came the collision.

The captain testified that at 7:09 o'clock A. M. visibility extended only 200 meters. It is admitted that when the engines are going slow ahead at  $6\frac{1}{2}$  miles per hour and are reversed full astern, the "Sakito Maru" requires 300 meters to come to a full stop. Thus we find a motor vessel proceeding in the fog, approaching an entrance to a harbor where she has every reason to expect the presence of other vessels, proceeding at a speed where she could not possibly bring herself to a stop in time to avoid a collision with either an approaching or anchored vessel. This is a fault chargeable against this motor vessel. Even if the visibility had been in accordance with Captain Sato's estimate of 300 meters, the vessel was going at an immoderate speed. (The Belgian King, 125 F. 869; The Ernest H. Meyer, 84 F. (2d) 496; Silver Line v. U. S. 94 F. (2d) 754.)

Proctors for the "Sakito Maru" advance a theory that "when a navigator exercises reasonable care in determining what are the existing circumstances and conditions but despite the exercise of such [149] reasonable care arrives at what proves later to be an erroneous conception of the same, he cannot be



held liable for permitting his vessel to proceed at a speed which is moderate, when considered in the light of the existing circumstances and conditions as determined by him after the exercise of reasonable care, despite the fact that such speed might not be moderate when considered in the light of the existing circumstances and conditions in reality." In other words, it is their contention that the "Sakito Maru" cannot be held responsible for the error in judging the visibility at the time of the collision. They admit their theory is unique and without authority. It naturally falls under its own weight. The very reading of Article 16 of the International Rules (33 USCA 92) clearly states that the vessel "shall go at a moderate speed, having careful regard to the existing circumstances and conditions."

The same type of argument was raised in *Oceanic Steam Navigating Co. v. John W. Aitken*, 25 Sup. Ct. 317, and answered by Justice Holmes when he stated:

"\* \* \* With reference to a part of the argument, we think it proper to say a word. It is quite true that negligence must be determined upon the facts as they appeared at the time, and not by a judgment from actual consequences which then were not to be apprehended by a prudent and competent man. This principle nowhere has been more fully recognized than by this court. *Lawrence v. Minturn*, 17 How. 100, 110, 15 L. Ed. 58, 62; *The Star of Hope* (*The Star of Hope v. Annan*) 9 Wall. 203, 19



L. Ed. 638. But it is a mistake to say, as the petitioner does, that if the man on the spot, even an expert, does what his judgment approves, he cannot be found negligent. The standard of conduct, whether left to the jury or laid down by the court, is an external standard, and takes no account of the personal [150] equation of the man concerned. The motion that it 'should be coextensive with the judgment of each individual', was exploded, if it needed exploding, by Chief Justice Tindal, in *Vaughan v. Menlove*, 3 Bing. N. C. 468, 475. And since then, at least, there should have been no doubt about the law. *Com. v. Pierce*, 138 Mass. 165, 176, 52 Am. Rep. 264; *Pollock*, Torts, 7th Ed. 432."

While Captain Sato estimates the speed of his vessel at  $6\frac{1}{4}$  to  $6\frac{1}{2}$  miles per hour at 7:09 o'clock A. M., I am satisfied that he is in error in this respect, and that the vessel was proceeding at not less than 8 miles per hour. The records of his own vessel indicate a speed in excess of 6 miles per hour. According to the "Sakito Maru's" deck log and chart, she was 9,120 feet from the "Olympic's" position at 7:03 o'clock A. M. All of that distance, except the last 536 feet, she covered between 7:03 o'clock A. M. and 7:09 o'clock A. M. Thus it will be seen that she covered approximately 8,584 feet in six minutes or 14 miles per hour. With reasonable allowance for error, it will be observed that my estimated speed of 8 miles per hour is conserva-

tive. A check of her tackometer readings also tends to verify my conclusions in this respect.

The charge that the "Sakito Maru" was not giving the proper fog signals has not been sustained. The evidence is overwhelming to the effect that her fog signals were proper.

The "Sakito Maru" is charged with the fault of not having an effective lookout. The evidence as to whether or not a lookout was posted at her bow is very conflicting, but I am accepting the testimony of those on board of the "Sakito Maru", that a lookout was on duty. I appreciate the fact that many witnesses testified that they saw no lookout, but I am inclined to accept the positive in place of the negative testimony.

But in view of my findings heretofore expressed on the visibi- [151] lity, it is quite apparent, that the lookout was a lookout in name only. He was charged with the responsibility of seeing that which was within his vision. This he failed to do. If he had been an efficient lookout, the collision easily could have been avoided and this failure of the lookout must be charged as a gross fault against the "Sakito Maru". (The Catalina, 18 F. Supp. 461 and cases therein cited.)

The "Olympic" also complains of the post-collision conduct of the "Sakito Maru" in two respects:

First, the withdrawal of the bow from the wound of the "Olympic": The impact took place at 7:10½ o'clock A. M. and the engines of the "Sakito Maru"

were stopped at 7:11 o'clock A. M. and were then put astern at 7:13 o'clock A. M. and the "Olympic" sank at 7:14 o'clock A. M. The wound according to the markings on the bow of the "Sakito Maru" after the collision, showed she had penetrated the "Olympic" 20 feet and 3 inches on the portside and 23 feet on the starboard side and a cross-ship's line between these two lines was 12 feet. The "Olympic" contends that good seamanship should have caused the "Sakito Maru" to hold her position in the wound until those on board were removed and that if she had done so, the sinking of the "Olympic" would have been delayed. The evidence on this feature of the case is very conflicting. I am of the opinion that the "Sakito Maru" did not put her engines astern until after the vessels had separated of their own accord. It seems to me that theorizing on whether the "Olympic" could have been kept afloat with such a wound in her mid-ship is too highly speculative to be placed in the category of a fault.

Second, the failure of the "Sakito Maru" to render immediate aid: The facts disclose that the "Sakito Maru's" engines were put astern at 7:13 o'clock A. M. and backed at least 300 meters, dropped her anchor at 7:17 o'clock A. M. and stopped her engines at 7:19 o'clock A. M. and lowered a life boat at 7:20 o'clock A. M. Inas- [152] much as there were other boats present at the scene of the collision, no loss of life was occasioned by any such delay, consequently, her conduct in no manner contributed to the loss of life and under the circumstances cannot be deemed a fault.

The "Sakito Maru" in its cross-libel charges the "Olympic" with many faults. She charges the "Olympic" with the failure of having a competent and attentive lookout on board. It appears that Louis R. Ohiser, the lookout, has proven himself to be an unstable witness and I have for the purpose of this opinion disregarded his testimony except where it has been amply corroborated. The evidence clearly shows that he saw the "Sakito Maru" long before the lookout of the "Sakito Maru" saw the "Olympic", and to that extent was more attentive to his duties than the "Sakito Maru's" lookout. In fact, the two are about equal as witnesses. One cannot tell the same story twice, while the other does not know anything except he was acting as a lookout and saw the "Olympic". Be that as it may, as a lookout, there was nothing Ohiser could do. His vessel was anchored. He could look and he could see, but there was nothing he could do to avoid the collision. The ability to avoid the collision rested entirely on the oncoming "Sakito Maru". The proctors for the "Sakito Maru" contend that he could have rung the bell louder, but there was no occasion to make a special effort in this regard until such time as it appeared that a collision was imminent. He had no reason to believe that the "Sakito Maru's" personnel could not see as well as he could; nor, that they had been unable to hear the various signals given by the "Olympic" and other vessels. The failure to have a lookout must have been a contributing cause of



the collision before it can be classed as a fault. (The Europe, 190 F. 475; The Blue Jacket, 144 U. S. 371, 12 Sup. Ct. 711.)

The "Olympic" is further charged with the failure to give the proper fog signals. The evidence is overwhelming to the effect that the proper signals were given. The only conflict raised in this [153] regard, is the testimony of the personnel of the "Sakito Maru" that no signals were heard until just immediately prior to the impact, and here again I have accepted positive testimony as against the negative.

The "Sakito Maru" charges that the "anchoring and deliberately maintaining the "Olympic" in a known steamer lane was a gross fault directly causing and contributing to the collision and all consequent losses."

As heretofore pointed out the "Olympic" was not anchored in a channel or fairway but upon the open ocean, consequently, she was not anchored in violation of 33 USCA 409. This feature of the case resolves itself into the question whether or not a vessel at its own peril anchors on a fishing bank, when said fishing bank happens to be in close proximity to a course used by merchant vessels. It makes no difference whether the "Olympic" was anchored three months or one hour. Was it a fault per se for the "Olympic" to be so anchored at 7:09 o'clock A. M. on September 4, 1940?

Proctors for the "Sakito Maru" cite Admiral Schley, 131 F. 433; The Persian, 181 F. 439, and



other cases, but they teach nothing more than that it is a fault to anchor in such a manner as to prevent or obstruct the passage of other vessels in channels and fairways. It has been held that even in a navigable channel there is no prohibition against anchoring, where under the circumstances there is sufficient room for moving vessels obeying the law to pass in safety. (*The Europe*, supra; *The Oregon*, 158 U. S. 186; *The John G. McCullough*, 232 F. 637.)

Proctors for the "Olympic" contend that she was a fishing vessel and therefore a favored vessel (33 USCA 111 and 211) but it is doubtful whether she can be classed as a fishing vessel within the purview of said sections.

The "Sakito Maru" claims that the "Olympic" was warned by Philip J. Moynahan, a warrant officer of the Coast Guard, of her dangerous position. He testified in his deposition as follows: [154]

"Q. I wish you would state whether the position of the "Olympic II", as indicated on that chart, was in or out of any of the sea lanes?

"A. I would say just outside of the main sea lane of that course usually taken by ships leaving Los Angeles on a southerly course for the Canal Zone and other points South.

"Q. Would that be equally true if the vessels were bound in, from the opposite direction?

"A. Yes, it would simply mean that they were coming in on a reverse course.

“Q. Speaking from your twenty years experience at sea, and your knowledge of conditions in that harbor, and in and out of it, please state, in your opinion, if it was dangerously close or a safe distance away?

“A. Dangerously close.”

Again, he also testified as follows:

“A. We made our boarding in a routine manner, inspecting all equipment etc. and in the course of our conversation with the person in charge, informed him that we thought they were anchored in a very dangerous place.

“Q. Was any reply made by the Master?

“A. He replied that he had, of course, nothing to do with that; that he was only acting for the owner. He gave us the name and address of the owner. I don't remember anything more.”

There is no evidence that this information was brought home to the owners of the “Olympic”. It will be further noted that he did not testify she was anchored on a sea lane, but dangerously close to one and that “he thought” or in other words he had an opinion on the subject. [155]

Under Section 1, 33 USCA, the Secretary of War had sufficient authority to prevent the anchoring of the “Olympic” at her place of anchorage. In view of the fact that the “Olympic” and other vessels had been accustomed to so anchor over a long period of time, it is reasonable to assume that if

the Secretary of War considered the place of anchorage of the "Olympic" dangerous to navigation he would have acted. Certainly, there is no presumption that the Secretary of War failed to perform his duties in that respect. As a matter of fact, the presumption is to the contrary.

I hold that the "Olympic" was violating no law in anchoring at her place of anchorage on the morning of the collision and that the "Sakito Maru" had no superior right of passage. To hold otherwise would preclude sport fishermen from anchoring at any time on the open unobstructed ocean.

Even if her place of anchorage was dangerous, such fact would not permit the "Sakito Maru" from escaping the consequences of her own failure in avoiding the collision when she had the ability to do so, as hereinafter more fully discussed under the heading of unseaworthiness.

The further charge is made that the "Olympic" was incompletely and inadequately manned, because it failed to comply with the statutory requirements of certified personnel, particularly 46 USCA 672 (a), (b) & (c). Without discussing the applicability of said sections to the "Olympic", suffice it to say, that the lack of such personnel, by no stretch of imagination contributed to the collision or the resultant damage and loss of life. If there had been more people on board the "Olympic", the loss of life would undoubtedly had been greater.

The "Sakito Maru" charges the "Olympic" was unseaworthy because she did not have a certificate

of inspection required by statute and because she failed to pass inspection required by statute.

The evidence shows that in 1938 the "Olympic" had the necessary certificate of inspection. That at that time the local inspectors recalled said certificate claiming all anchored pleasure vessels had [156] to comply with the Load Line Act. (46 USCA 85). When the inspectors had determined that this section had no application and the standards of safety as provided by the General Rules and Regulations for coastwise passenger vessels, they decided 46 USCA 395 applied. It is a matter of common knowledge that there has been considerable confusion in the minds of the authorities concerning the authority of the local inspectors over such vessels as, the "Olympic". The large number of similar vessels anchored off the coast of Southern California used as pleasure crafts for fishing and gambling is unique to this district, and the problem of inspection and ascertaining their seaworthiness for the protection of the public has been a responsibility that the departments of the government have been anxious and ready to assume, provided they had authority to do so. Finally in 1940, the Bureau of Navigation insisted these pleasure vessels were subject to inspection under the provisions of 46 USCA 395, 396, 397, and 398. Therefore, on June 3, 1940, the U. S. Local Inspectors directed a circular letter to the "Olympic" enclosing certain minimum requirements as follows:



“Non-self propelled vessels over 100 gross tons, anchored or moored on the seas or on waters connected therewith, that are not protected from the hazards of the sea, which are patronized by the public for pleasure purposes, are subject to and shall be inspected and certificated pursuant to the provisions of the act of Congress approved May 28, 1908. (46 U.S.C. 395, 396, 397, 398.)

“The following general provisions constituting minimum requirements shall be followed in the inspection and certification of such vessels:”

Then follows some 41 minimum requirements. However, these requirements had not been enforced and owners of these pleasure vessels were given a reasonable length of time to comply with the same. Require- [157] ment No. 4 reads as follows:

“A sufficient number of transverse watertight bulkheads shall be fitted so that the vessel will remain afloat with positive stability in the event any one main compartment is flooded.”

Said Section 395 provides as follows:

“The local inspectors of steamboats shall at least once in every year inspect the hull and equipment of every seagoing barge of one hundred gross tons or over, and shall satisfy themselves that such barge is of a structure suitable for the service in which she is to be employed, has suitable accommodations for the crew, and is in a condition to warrant the be-



lief that she may be used in navigation with safety to life. They shall then issue a certificate of inspection in the manner and for the purposes prescribed in sections 399 and 400. (May 28, 1908, c. 212, Sec. 10, 35 Stat. 428.)

It will be noted from that section that no rule making power is vested in the local inspectors. It will be further noted that Section 395 is a part of Chapter XIV, which provides for the inspection of steam vessels and that 46 USCA 375, provides for and invests in the Supervising Inspectors power to promulgate certain rules and regulations but nowhere do I find any such power vested in local inspectors. Even if they had such powers under Section 395, the same would of necessity have to apply to all seagoing barges. Heretofore, bulkhead requirements have been covered by Congress (46 USCA 482 and 483) and by the Supervising Inspectors (Sec. 72, Rule III and Section 65 of Rule IV, as well as others, General Rules and Regulations prescribed by the Board of Supervising Inspectors.) *The Bee*, 138 F. 303; *Towboat No. 1*, *Norfolk & Western*, 74 F. 906; *The H. M. Whitney*, 86 F. 697. I therefore hold that the so-called minimum requirements of the [158] local inspectors were a nullity and the failure to comply with the same does not establish the unseaworthiness of the "Olympic".

I further hold that the "Olympic" was not a seagoing barge within the contemplation of Section 395, 46 USCA. Congress has not defined the term "barge", except when used in connection with Sections 643a, 660b and 672b (46 USCA 672c). Gen-

erally speaking, "barge" is "a word of somewhat comprehensive signification", (9 C.J.S. 1542) and may cover crafts of many kinds. It may cover "pleasure boats, or boats of state, furnished with elegant apartments, canopies, and cushions, equipped with a band of rowers, and decked with flags and streamers, used by officers or magistrates and a flat bottomed vessel of burden for the loading and unloading of ships." (The Mamie, 5 F. 813).

The Encyclopedia Britannica defines "barge" as follows:

"The name barge was originally applied to a small sailing vessel but afterwards came into general use for a flat bottomed boat used for carrying goods on inland waterways. \* \* \* Barges are usually towed or fitted with some kind of engine. The state barge was a heavy ornamented vessel used for carrying passengers on occasion of state ceremonies. College barges are houseboats moored in the river for the use of members of college rowing clubs.

\* \* \*

"The common principle of all types of barges and lighters is to have as large a hatchway as possible and as small a deck area as possible to save what is called "cupboard space" under deck in the hold and to make for easy and quick handling and therefore cheapness in loading and discharging cargoes."

The Oxford English Dictionary defines it as follows:

“A small seagoing vessel with sails; a flat [159] bottomed freight boat chiefly for canal and river navigation, either with or without sails. In the latter case also called a lighter. In the former, as in the Thames barges, generally dandy rigged having one important mast. \* \* \* A rowing boat especially a ferry boat. \* \* \* The second boat of a man of war; a long narrow boat generally with not less than ten oars for the use of the chief officers. \* \* \* A large vessel propelled by oars or towed, generally much ornamented and used on state occasions. \* \* \* An ornamental, houseboat. \* \* \* A double decked passenger and freight vessel without sails or power and towed by steamboat.” (Webster’s International Dictionary definition also given).

In the limitation proceedings proctors for the “Sakito Maru”, contended that the “Olympic” was not a “barge”—a general name given to a large pulling boat. It is often given to flat bottomed craft, but more particularly to vessels built for towage purposes and cite as their authority Bradford’s Glossary of Sea Terms.

It is therefore apparent it is necessary to ascertain the sense Congress used the word “barge” in said section 395, just as Judge Brown did in *The Mamie*, supra. Naturally, the word “barge” should be interpreted and applied within the manifest intent of Congress. (25 R.C.L. 988; 59 C.J. 1016, 1021).

The Congressional Record and particularly Sen-

ate Committee Report No. 560 clearly indicates the hazards that Congress desired to remedy and from said report it is clear that Congress intended to provide for the inspection of a type of vessel of ship shaped for the carrying of cargo under deck and used exclusively for the carrying of freight, equipped with large hatches. Such barges had no power of self-propulsion and were usually towed from port to port. [160]

This report throws an interesting light on the attempt of the local inspectors to promulgate rules. In said report among other things it is stated:

“The first section of the bill provides for an inspection of the hulls of such barges similar to the inspection to which the hulls of seagoing freight steamers are subject, under Sections 4421 and 4423, Revised Statutes. The second section requires a simple but indispensable life saving equipment. In many instances, doubtless, this equipment is now provided. It should be required in all instances.”

Clearly indicating that the inspection was to be limited to the hulls.

In endeavoring to follow out the intent of Congress, I hold that the “Olympic” was not a barge within the purview of said Section 395.

The failure to provide for the inspection of pleasure vessels such as the “Olympic” is a problem for Congress and the Supervising Inspectors and it is not the function of the courts to distort existing legislation as a substitute for such omission. This



court is faced with the same problem in this regard that faced the court in *The Bee*, *supra*.

Even if the failure to have bulkheads as ordered by the local inspectors might be deemed a fault, I am of the opinion that the "Sakito Maru" is solely chargeable with the loss of life, personal injuries and property damages suffered by reason of said collision. The "Sakito Maru" by the exercise of reasonable care and prudence could have avoided the collision and I do not believe it lies within her mouth to shift any part of the damages to the "Olympic" by claiming she should have been equipped with more bulkheads. The immoderate speed coupled with her failure to have a competent and efficient lookout was the sole proximate cause of said collision.

I appreciate the fact that the "last clear chance" rule is not generally considered applicable in this country in admiralty (*The [161] Norman B. Ream*, 252 F. 409), at the same time our courts have not been backward in applying the rule under whatever name it may be labeled. *The Yucatan*, 226 F. 437; *Crowley Launch & Tugboat Co. v. Wilmington Transportation Co.* 117 F. (2d) 651; *American Hawaiian S.S. Co. v. King Coal Co.*, 11 F. (2d) 41; *The William A. Paine*, 39 F. (2d) 586; *The Europe*, 190 F. 475. However, Judge Augustus N. Hand, in the recent case of the *Cornelius Vanderbilt*, 120 F. (2d) 766, apparently recognized the rule under its true color when he stated:

"The *Hempstead* was aware of the approach of the *Watuppa* and her barge in time to avoid



the collision and, if she was not, should have seen them, but for her neglect to maintain a proper lookout. She had the Watuppa on her starboard hand and, as her master conceded, was bound to give the *matter* the right of way. The Watuppa, however, having a tow on a long hawser, difficult to manage in dangerous waters, could not readily swing her barge to the starboard of its position in the channel. Though each vessel neglected to blow passing signals, as required by the rules, and the Watuppa was on the wrong side of the channel, the outstanding fact is that the Hempstead had the last clear chance to prevent a collision by the exercise of ordinary care at a time when the Watuppa had the right of way and was not in a position to swing her tow away from the Hempstead's barges in time to avert disaster. Instead of holding back, the Hempstead took the risk of coming on and then attempting to swing her tow to port—a difficult manoeuvre in a narrow dangerous channel which failed of success.”

Proctors for the “Sakito Maru” in summing up their case ask me to apply the rule set forth in the Samuel Dillaway, 98 F. 138, in [162] judging the conduct and demeanor of the various witnesses. I heretofore expressed myself relative to the testimony of Ohiser. I recognize Captain Sato as an experienced master of exceptional ability and as a very impressive and convincing witness, but in view of my inability to reconcile the strong and convince-

ing testimony of disinterested witnesses with that of Captain Sato, I am impelled to apply the rule in the Samuel Dillaway, *supra*, wherein the court said:

“This practical rule is only an application of the facts that the best disposed persons are prone to imagine theories to excuse the results of their own oversights, and that on the high seas the rapid occurrence of events, in connection with the approach of two colliding vessels at night, naturally leaves confusion in the minds of those who fail to maintain proper vigilance and a state of preparation, and who are, therefore, surprised by unexpected, sudden catastrophes.”

I am therefore convinced that Captain Sato in loyalty to his own ship and crew has placed too much credence in the testimony of his own lookout and has thereby unconsciously submerged his own opinion and permitted the testimony of the lookout to become his own present conclusion.

The property damage claims of the Hermosa Amusement Corporation, Ltd., George W. Berger and Norma Rubin as set forth in the first count in her libel in intervention will be referred to David B. Head, Esq., U. S. Commissioner, as Special Master. The balance of the claims will be heard in this court.

Upon the ascertainment of the award to the respective parties entitled thereto, the court will enter its decree in accordance with this opinion.

Dated: Los Angeles, California, this 31st day of October, 1941.

BEN HARRISON

Judge

[Endorsed]: Filed Oct. 31, 1941. [163]

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[Title of District Court and Cause.]

STIPULATION AS TO REASONABLENESS  
OF STIPULATED DECREES

Whereas, an amended libel in intervention was filed herein by Grace E. Mayo and Frank F. Mayo, individually and as administrators of the Estate of Roy A. Mayo, Deceased, libelants, against the Motor Vessel "Sakito Maru", etc., and Nippon Yusen Kabushiki Kaisya, a corporation, respondents, claiming damages for the death of Roy A. Mayo; and

Whereas, it has been stipulated between said libelants and said respondents that a decree may be entered herein against said respondents in the amount of \$4,100 for damages for the death of said Roy A. Mayo; and

Whereas, a libel in intervention was filed herein by Lena Karsh, Florence, Lillian, and Shirley Rose Karsh, by Lena Karsh, their guardian ad litem, libelants, against the Motor Vessel "Sakito Maru", etc., and Nippon Yusen Kabushiki Kaisya, a [166] corporation, respondent, claiming damages for the death of Joseph Karsh, for personal injuries, and for the loss of personal effects; and

Whereas, it has been stipulated between said libelants and said respondents that a decree may be entered herein against said respondents in the

amount of \$5,500 for damages for the death of said Joseph Karsh; and

Whereas, a libel in intervention was filed herein by Albertine K. Johnson and Elwood Johnson, individually and as administrators of the Estate of Curtis Elwood Johnson, Deceased, libelants, against the Motor Vessel "Sakito Maru", etc., and Nippon Yusen Kabushiki Kaisya, a corporation, respondents, claiming damages for the death of Curtis Elwood Johnson; and

Whereas, it has been stipulated between said libelants and said respondents that a decree may be entered herein against said respondents in the amount of \$4,500 for damages for the death of said Curtis Elwood Johnson; and

Whereas, an amended libel was filed, and is consolidated herein, by Helen McGrath, Helen McGrath as administratrix of the Estate of Peter Bernard McGrath, Deceased, and Helen McGrath as special administratrix of the Estate of James B. McGrath, Deceased, libelants, against the Japanese Motor Vessel "Sakito Maru", etc., Nippon Yusen Kabushiki Kaisya, a corporation, respondents, claiming damages for the deaths of said Peter Bernard McGrath and James B. McGrath; and

Whereas, it has been stipulated between said libelants and said respondents that a decree may be entered herein against said respondents in the amount of \$17,000 for damages for the death of said Peter Bernard McGrath and in the amount of \$3,000 for damages for the death of said James B. McGrath; and [167]



Whereas, an amended libel was filed, and is consolidated herein, by Roger S. Culp, individually and as administrator of the Estate of Joseph W. Culp, Deceased, libelant, against the Motor Vessel "Sakito Maru", etc., and Nippon Yusen Kabushiki Kaisya, a corporation, respondents, claiming damages for the death of Joseph W. Culp; and

Whereas, it has been stipulated by said libelant and said respondents that a decree may be entered herein against said respondents in the amount of \$4,050 for damages for the death of said Joseph W. Culp; and

Whereas, an amended libel was filed, and is consolidated herein, by Wilma Greenwood and Jack M. Greenwood, by Wilma Greenwood, his guardian ad litem, libelants, against the Motor Vessel "Sakito Maru", etc., and Nippon Yusen Kabushiki Kaisya, a corporation, respondents, claiming damages for the death of Jack Greenwood; and

Whereas, it has been stipulated by said libelants and said respondents that a decree may be entered herein against said respondents in the amount of \$7,500 for damages for the death of said Jack Greenwood; and

Whereas, an amended libel was filed, and is consolidated herein, by Lucy Sylvester as administratrix of the Estate of Joseph Sylvester, Deceased, libelants, against Nippon Yusen Kabushiki Kaisya, a Japanese corporation, respondent, claiming damages for the death of Joseph Sylvester; and

Whereas, it has been stipulated by said libelants and said respondent that a decree may be entered



herein against said respondent in the amount of \$5,000 for damages for the death of said Joseph Sylvester; and

Whereas, a libel in intervention was filed herein by [168] John Gilbert Montgomery, by his guardian ad litem, Margerie L. Montgomery, libelant, against Nippon Yusen Kabushiki Kaisya, a corporation, respondent, claiming damages for personal injuries and damage to and loss of personal property; and

Whereas, it has been stipulated between said libelant and said respondent that a decree may be entered herein against said respondent in the amount of \$625 for damages for said personal injuries and damage to and loss of personal property; and

Whereas, a libel in intervention was filed herein by S. T. Elliott, libelant, against Nippon Yusen Kabushiki Kaisya, a corporation, respondent, claiming damages for personal injuries and for loss of personal property; and

Whereas, it has been stipulated between said libelant and said respondent that a decree may be entered herein against said respondent in the amount of \$300 for damages for said personal injuries and loss of personal property; and

Whereas, a libel was filed, and is consolidated herein, by J. Eldon Anderson, libelant, against Nippon Yusen Kabushiki Kaisya, a corporation, respondent, claiming damages for personal injuries; and

Whereas, it has been stipulated between said libelant and said respondent that a decree may be

entered herein against said respondent in the amount of \$300 for damages for said personal injuries; and

Whereas, all of said damages are alleged to have been occasioned by the collision of the Motor Vessel "Sakito Maru" and the Fishing Barge "Olympic II" on September 4, 1941; and

Whereas, third party petitions have been filed by Nippon Yusen Kabushiki Kaisya, a corporation, impleading and praying for relief as therein set forth against Hermosa Amusement Corporation, [169] Ltd., a corporation, and J. M. Andersen, in connection with each of said libels;

It Is Hereby Stipulated and Agreed by Hermosa Amusement Corporation, Ltd., a corporation, and J. M. Andersen, third party respondents, through their respective undersigned counsel, without prejudice to any other matter, that the respective amounts hereinabove recited are reasonable awards for the above described damages suffered by the respective libelants, occasioned by the collision of the Motor Vessel "Sakito Maru" and the Fishing Barge "Olympic II".

Dated: December 16th, 1941.

ALFRED T. CLUFF,  
HUGH B. ROTCHFORD,  
GEORGE H. MOORE,  
CLUFF & BULLARD,

Proctors for Hermosa Amusement Corporation, Ltd., and  
J. M. Andersen.

[Endorsed]: Filed Dec. 16, 1941. [170]

In the District Court of the United States for  
the Southern District of California, Central  
Division

In Admiralty—No. 1138-BH

HERMOSA AMUSEMENT CORPORATION,  
LTD., a Corporation,

Libelant,

vs.

The Motor Vessel “SAKITO MARU”, etc., et al,  
Respondents.

NIPPON YUSEN KABUSHIKI KAISYA, a  
Corporation,

Claimant and Petitioner.

HERMOSA AMUSEMENT CORPORATION,  
LTD., a Corporation, J. M. ANDERSEN, et al,  
Third Party Respondents.

FINAL DECREE AND JUDGMENT FOR LI-  
BELANT, HERMOSA AMUSEMENT COR-  
PORATION, LTD.

This cause, at issue on the First Amended Libel of the libelant, Hermosa Amusement Corporation, Ltd., and the Answer of the claimant thereto, and on the Cross-Libel of the claimant, respondent and cross-libelant, Nippon Yusen Kabushiki Kaisya, and the Answer of the cross-respondents, Hermosa Amusement Corporation, Ltd. and J. M. Andersen, thereto, having been consolidated for trial with various other libels and claims arising out of the collision between the respondent motor vessel “Sa-

kito Maru" and the libelant's vessel "Olympic II" on September 4, 1940;

And the said consolidated causes coming on regularly for trial on September 16, 1941, and having been duly tried, argued and submitted to the court for decision on the issue of liability for the said collision; [180]

And the court, after due consideration, having on October 31, 1941, rendered and filed herein its detailed opinion in writing, which opinion the court hereby adopts as its findings of fact and conclusions of law on the issues of liability for the said collision, and further finds and concludes as follows:

That the collision on September 4, 1940, between the respondent motor vessel "Sakito Maru" and the libelant's vessel "Olympic II" was due solely to the faults of the "Sakito Maru", her master, officers and crew in the respects in said opinion set forth; that neither the said collision nor any of the consequences thereof was due to any fault, omission or neglect on the part of the "Olympic II" or her crew, or of the libelant or of the cross-respondent, J. M. Andersen, in any of the respects alleged in the answer to the amended libel herein or in the cross-libel herein, or otherwise; that as a result of the said collision and on September 4, 1940, the "Olympic II" sank and, with her tackle, apparel and furniture, became a total loss; that at the time of the collision the libelant, Hermosa Amusement Corporation, Ltd., was the sole owner of the "Olympic II", her tackle, apparel and furniture; that the

said libelant is entitled to have and recover from the respondent motor vessel "Sakito Maru", her engines, etc., and from the respondent and claimant, Nippon Yusen Kabushiki Kaisya, and Fidelity and Deposit Company of Maryland, a corporation, its stipulator for costs and value, the amount of its damages by reason of the said collision, with interest at the rate of 7% per annum from September 4, 1940, to the date of this decree, and for its costs of suit; and that the cross-libelant, Nippon Yusen Kabushiki Kaisya, take nothing by reason of its cross-libel;

And the court having referred it to David B. Head, Esq., as commissioner, to ascertain and report the amount of the damages [181] suffered by the libelant, Hermosa Amusement Corporation, Ltd., and the commissioner, on March 6, 1942, having filed his report, finding and reporting the amount of the libelant's said damages in the sum of \$29,500.00, and requesting that his fees as such commissioner be fixed and allowed; and the libelant and the claimant each having filed exceptions to the said report, and the court, after consideration, having overruled all of said exceptions, ordered that the said report be in all respects confirmed, and that the commissioner's fees as respects the reference of the matter herein adjudicated be fixed and allowed at the sum of \$200.00;

Now, therefore, on motion of Alfred T. Cluff, Esq., one of the proctors for the libelant, Hermosa Amusement Corporation, Ltd., it is hereby



Ordered, Adjudged and Decreed as follows:

1. That the report of the commissioner, David B. Head, Esq., in so far as the same affects above named libelant, filed herein on March 6, 1942, be, and the same is, hereby in all respects approved and confirmed, and the findings and conclusions of the commissioner therein set forth be, and the same are, hereby adopted as the findings and conclusions of the court.

2. That the libelant, Hermosa Amusement Corporation, Ltd., have and recover of and from the respondent motor vessel, "Sakito Maru", her engines, tackle, apparel, furniture and equipment, and from the claimant and respondent, Nippon Yusen Kabushiki Kaisya, a corporation, and from Fidelity and Deposit Company of Maryland, a corporation, said claimant's stipulator for value and costs, the amount of its damages found by the commissioner, to-wit, the sum of \$29,500.00, with interest thereon at 7% per annum from September 4, 1940, to the date of this decree, to-wit, the sum of \$3172.07, or an aggregate sum of \$32,672.07, to- [182] gether with its costs taxed in the sum of \$237.08, all with interest from the date of this decree at the rate of 7% per annum until paid.

3. That David B. Head, Esq., commissioner, have and recover of the claimant and respondent, Nippon Yusen Kabushiki Kaisya, a corporation, and from Fidelity and Deposit Company of Maryland, a corporation, the claimant's stipulator for

value and costs, the sum of \$200.00, his fees in the reference in the matter herein adjudicated, together with interest at the rate of 7% per annum from the date hereof until paid.

4. That the cross-libel of Nippon Yusen Kabushiki Kaisya be, and the same is, hereby dismissed.

5. That all third party petitions filed herein by Nippon Yusen Kabushiki Kaisya against Hermosa Amusement Corporation, Ltd., and J. M. Andersen be, and each of the same is, hereby dismissed.

6. That unless this decree be satisfied within thirty (30) days after the entry hereof and notice to James L. Adams, Esq., and Messrs. Lillick, Geary, McHose & Adams, proctors for claimant and respondent, Nippon Yusen Kabushiki Kaisya, the stipulator for costs and for value on the part of said claimant and respondent, cause the engagements of its stipulations to be performed or show cause within four (4) days after the expiration of said thirty (30) days why execution should not issue against its goods, chattels and lands to enforce satisfaction of this decree.

Dated: March 17, 1942.

BEN HARRISON,

United States District Judge.

[Endorsed]: Filed and entered Mar. 17, 1942. [183]

In the District Court of the United States for  
the Southern District of California, Central  
Division.

In Admiralty—No. 1138 B.H.

HERMOSA AMUSEMENT CORPORATION,  
LTD., a California corporation,

Libelant,

-vs-

THE MOTOR VESSEL "SAKITO MARU", HER  
ENGINES, TACKLE, APPAREL, FURNI-  
TURE, ETC., AND THE MASTER AND  
OWNERS THEREOF, AND N.Y.K. LINES,  
NIPPON YUSEN, KAISHA STEAMSHIP  
CO., a corporation, NIPPON YUSEN KABU-  
SHIKI KAISYA,

Respondents,

GRACE E. MAYO and FRANK F. MAYO, in-  
dividually and as the Administrators of the  
Estate of ROY A. MAYO, Deceased,

Libelants in Intervention,

-vs-

HERMOSA AMUSEMENT CORPORATION,  
LTD., a California corporation, THE MOTOR  
VESSEL "SAKITO MARU", HER EN-  
GINES, TACKLE, APPAREL, FURNI-  
TURE, ETC., AND THE MASTER AND  
OWNERS THEREOF, AND N.Y.K. LINES,  
NIPPON YUSEN KAISHA STEAMSHIP  
CO., a corporation, NIPPON YUSEN KAI-

SHA KABUSHIKI, A CORPORATION OF  
THE EMPIRE OF JAPAN, JOHN DOE,  
AND RICHARD ROE,

Respondents in Intervention.

AMENDED LIBEL IN INTERVENTION OF  
GRACE E. MAYO AND FRANK F. MAYO

To the Honorable Judges of the District Court of  
the United States for the Southern District of  
California:

Comes now the Libelant in Intervention, Grace E. Mayo, as one of the Administrators of the Estate of Roy A. Mayo, Deceased, and by way of Libel in Intervention against the above named Respondents in Intervention, complains and alleges as follows: [186]

First: That the Libelant, Grace E. Mayo, is one of the appointed, qualified and acting Administrators of the Estate of Roy A. Mayo, deceased, in proceedings No. 198190 pending in the Superior Court of the State of California, in and for the County of Los Angeles.

Second: That said Frank F. Mayo, was the father of Roy A. Mayo, and said Grace E. Mayo, was the mother of Roy A. Mayo, deceased, and they are the only heirs at law of said decedent. That said Grace E. Mayo had the lawful custody and control of the said Roy A. Mayo, a minor of the age of fifteen (15) years at the time of his death hereinafter alleged. That at all times prior to his death a *mutal* relation of love and affection existed between said Roy A. Mayo and his said mother. That said Grace



E. Mayo was of the age of 48 years, September 4, 1940.

Third: That at all times herein mentioned, the Libelant in Intervention, Grace E. Mayo, was the mother of Roy A. Mayo, aged fifteen (15) years; that heretofore on or about the month of December, 1933, Libelant in Intervention, Grace E. Mayo, obtained a Final Decree of Divorce from Frank F. Mayo, at Los Angeles, California, in the Superior Court of the State of California, in and for the County of Los Angeles, case Number D-105638, wherein she was granted sole care, custody and control of said minor child, Roy A. Mayo.

Fourth: That the Motor Vessel, "Sakito Maru", is a foreign vessel and was at the time of the institution of this action within the jurisdiction of this court, to-wit: at the port of Los Angeles, California. That said Grace E. Mayo is informed and believes, and upon such information, alleges, that S. Sato was the Master and Respondent, Nippon Yusen Kabushiki Kaisya, a corporation of the Empire of Japan, was the owner thereof.

Fifth: That the fishing barge "Olympic II", was at all times herein mentioned an American vessel of which said John Doe [187] was the Master thereof, and said Hermosa Amusement Corporation, Ltd. a corporation, the owner thereof.

Sixth: That the true names of Respondents, John Doe and Richard Roe, are unknown, and that they are therefore sued by such fictitious names, and upon ascertaining said true names, leave of court will be



asked to amend said pleading to insert said true name or names.

Seventh: Upon information and belief, that the said barge "Olympic II" was a fishing barge on the high seas, and was at all times hereinafter mentioned anchored in waters beyond a marine league off the State of California, to-wit, about three and one-half nautical miles off the port of Los Angeles.

Eighth: That on September 4, 1940, at the invitation and request of the said master of the said barge "Olympic II" and the said owner, the Respondent Hermosa Amusement Corporation, Ltd., the said Roy A. Mayo was lawfully upon said barge for the purpose of fishing therefrom, and he had rendered and paid the required compensation to said master and owner for the privilege of being thereon and using the facilities thereof.

Ninth: That on said September 4, 1940, at about the hour of 7:00 A.M. said vessel, "Sakito Maru", was inward bound to the Port of Los Angeles, and was approaching the said Port of Los Angeles at or near the position of the said barge.

Tenth: That on the 4th day of September, 1940, at or about the hour of seven o'clock A.M. while the said fishing barge "Olympic II" was anchored at the Horseshoe Kelp, a point on the high seas approximately six (6) miles off the Port of Los Angeles, at which time and place the weather was misty and the visibility limited not more than one-half mile, by reason of misty and foggy weather conditions, at which time and place the said motor vessel "Sakito

Maru" was preceeding to the Port of Los Angeles at a high and excessive rate of speed; said Vessel being improperly manned [188] in that it did not have a competent and proper lookout on watch, nor did said Vessel have competent and proper officers attending to their duties, and said Vessel being so improperly, carelessly and negligently navigated and operated, that said Vessel by reason of the premises aforesaid, and because of the negligent manning and operating of said fishing barge "Olympic II", said negligence being the failure to give and maintain proper warning signals and the failure to post and notify shipping of the location of the said moored fishing barge "Olympic II", that said motor vessel "Sakito Maru", ran into and collided with the fishing barge, "Olympic II" striking and breaking her amidships. That immediately thereafter, said motor vessel, "Sakito Maru", was so negligently and carelessly operated so as to permit her to back away from the said fishing barge, "Olympic II", allowing said fishing barge, "Olympic II" to sink almost immediately.

Eleventh: That said Roy A. Mayo was aboard said barge at the time the same was so struck by the motor vessel, "Sakito Maru". Upon information and belief, that the said "Sakito Maru" and her master saw the said Roy A. Mayo aboard said barge, and saw that the same was in imminent danger of sinking, and that said motor vessel "Sakito Maru" and said master thereof were then and there requested to stand by, lower life boats, and give aid

to and rescue said Roy A. Mayo, but that said motor vessel "Sakito Maru" and said master thereof failed, refused and neglected to lower life boats, give aid as requested, and remain standing by. Upon information and belief that said motor vessel, "Sakito Maru" was then and there equipped with life boats.

Twelfth: Upon information and belief, that by reason of the neglect and fault of the master and owner of said barge "Olympic II" the same was at the time and place aforesaid in an unseaworthy condition, and the same was at said time and place negligently maintained and operated. [189]

Thirteenth: That as a direct and proximate result of the negligent operation of the said motor vessel, "Sakito Maru", and her failure to stand by and render aid, and of the said negligent operation and maintenance of the said barge "Olympic II", and the unseaworthy condition thereof, the said Roy A. Mayo was cast into the water from said barge, "Olympic II", and drowned at said time and place, to the damage of said Grace E. Mayo in the sum of Fifty Thousand (\$50,000.00) Dollars.

Fourteenth: That prior to the death, the said Roy A. Mayo was ablebodied and was capable of, and was in fact, earning Fifty-five (\$55.00) Dollars per month, which he contributed to the support of said Grace E. Mayo.

Fifteenth: On September 7, 1940, the Libel in Intervention of Grace E. Mayo was filed in the above entitled court and the Motor Vessel, "Sakito

Maru'', was by order of said court placed in the custody of the marshal thereof, and in order to obtain the release of the same, the owners thereof, to-wit, Nippon Yusen Kabushiki Kaisya, a corporation of the Empire of Japan, filed a stipulation for release in the sum of Ten Thousand (\$10,000.00) Dollars.

Sixteenth: That on or about November 1, 1940, said Grace E. Mayo, Libelant in Intervention, was duly and regularly appointed co-administrator of the Estate of Roy A. Mayo, deceased, under Probate No. 198190 in the Superior Court of Los Angeles County, State of California and is now the qualified and acting co-administrator of said Estate of Roy A. Mayo, deceased, and as such co-administrator is entitled to the benefits of said stipulation for the benefit of said parent of said Roy A. Mayo, deceased.

Seventeenth: That all and singular the premises are true and within the Admiralty and Maritime Jurisdiction of the United States and of this Honorable Court pursuant to Section 761 of Title 46, U.S.C.A.

For a Second and Separate Cause of Action, Grace E. Mayo, [190] Individually, against Said Respondents in Intervention Complains and Alleges:

First: Incorporates herein by reference to allegations of Paragraphs I, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, and XVII of the first cause of action hereinabove set forth.



Second: That although this Libelant in Intervention is informed and believes that said collision and the death of said Roy A. Mayo occurred beyond a marine league from the shore of the State of California, should this Court determine that the same occurred within the territorial waters of the State of California, then in that event she is entitled to maintain this action pursuant to the provisions of Section 376 of the Code of Civil Procedure of the State of California.

For a Third, Separate and Distinct Cause of Action, Frank F. Mayo, as Co-administrator of the Estate of Roy A. Mayo, Deceased, Against Said Respondents in Intervention, Complains and Alleges:

First: Incorporates herein by reference to allegations of Paragraphs IV, V, VI, VII, VIII, IX, X, XI, XII, XV, and XVII of the first cause of action hereinabove set forth.

Second: That the Libelant in Intervention, Frank F. Mayo, is one of the appointed, qualified and acting administrators of the Estate of Roy A. Mayo, deceased, in Probate Proceedings No. 198190, pending in the Superior Court of the State of California, in and for the County of Los Angeles.

Third: That said Frank F. Mayo, was the father of said Roy A. Mayo, deceased, and one of his heirs-at-law, and that at all times prior to his death, a mutual relation of love and affection existed between said Roy A. Mayo and his said father; that said



Frank F. Mayo, was of the age of 55 years, September 4, 1940.

Fourth: That as a direct and proximate result of the negligent operation of the said motor vessel, "Sakito Maru", and her [191] failure to stand by and render aid, and of the said negligent operation and maintenance of the said barge "Olympic II", and the unseaworthy condition thereof, the said Roy A. Mayo was cast into the water from said barge "Olympic II", and drowned at said time and place, to the damage of said Frank F. Mayo, in the sum of Twenty-five Thousand (\$25,000.00) Dollars.

For a Fourth and Separate Cause of Action, Frank F. Mayo, Individually, Against Said Respondents in Intervention, Complains and Alleges:

First: Incorporates herein by reference to allegations of Paragraphs I, II, III, and IV of the third cause of action hereinabove set forth.

Second: That although this Libelant in Intervention is informed and believes that said collision and the death of said Roy A. Mayo occurred beyond a marine league from the shore of the State of California, should this Court determine that the same occurred within the territorial waters of the State of California, then in that event he is entitled to maintain this action pursuant to the provisions of Section 376 of the Code of Civil Procedure of the State of California.

Wherefore, Libelant in Intervention, Grace E. Mayo individually and as co-administrator of the

Estate of Roy A. Mayo, deceased, prays that process in due form of law, according to the course of this Honorable Court, in cases of Admiralty and maritime jurisdiction, may issue against said Hermosa Amusement Corporation, Ltd., a California corporation, and against the said Motor Vessel, "Sakito Maru", her engines, tackle, apparel, furniture, etc., and that the said S. Sato, Master of said Vessel, and the N.Y.K. Lines and Nippon Yusen Kaisha Steamship Company, a corporation, and all other [192] persons having any right, title, or interest in said Vessel, her engines, tackle, apparel, furniture, etc., may be cited to appear and answer all the matters aforesaid, and that this Honorable Court may be pleased to decree the payment of damages to this Intervenor, individually and as co-administrator of the Estate of Roy A. Mayo, deceased, as aforesaid, in the sum of Fifty Thousand (\$50,000.00) Dollars, with costs, and that the said Vessel may be condemned and sold to pay the same, and that the Libelant in Intervention as co-administrator be permitted to share in the benefits of the bond filed by the owners of said Motor Vessel "Sakito Maru" to release the same from the custody of the Marshal of the above Court, and may have such other and further relief in the premises, as in law and justice she, individually and as co-administrator, may be entitled to receive, and Frank F. Mayo, Libelant in Intervention, individually and as co-administrator of the Estate of Roy A. Mayo, deceased, prays that process in due form of law, according to the course of this Honorable Court, in

cases of Admiralty and maritime jurisdiction, may issue against said Hermosa Amusement Corporation, Ltd., a California corporation, and against the said Motor Vessel, "Sakito Maru", her engines, tackle, apparel, furniture etc., and that the said S. Sato, Master of said Vessel, and the N.Y.K. Lines and Nippon Yusen Kaisha Steamship Company, a corporation, and all other persons having any right, title or interest in said Vessel, her engines, tackle, apparel, furniture, etc., may be cited to appear and answer all the matters aforesaid, and that this honorable Court may be pleased to decree the payment of damages to this Intervenor, individually and as co-administrator of the Estate of Roy A. Mayo, deceased, as aforesaid, in the sum of Twenty-five Thousand (\$25,000.00) Dollars, with costs, and that the said Vessel may be condemned and sold to pay the same, and that the Libelant in Intervention as co-administrator, be permitted to share in the benefits of the bond filed by the owners of said [193] Motor Vessel "Sakito Maru", to release the same from the custody of the Marshal of the above Court, and may have such other and further relief in the premises, as in law and justice he, individually and as co-administrator, may be entitled to receive.

WAYLAND & STEARNS

By FRANK L. STEARNS

Proctors for Grace E. Mayo

600 Black Building,

Los Angeles, California,

MICHIGAN 1946

DAVID I. LIPPERT

David I. Lippert, Proctor for  
Frank F. Mayo,  
806 Union Bank Building,  
Los Angeles, California,  
Michigan 7437

(Duly verified.)

[Endorsed]: Filed Feb. 6, 1941. [194]

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[Title of District Court and Cause.]

ANSWER TO AMENDED LIBEL IN INTER-  
VENTION OF GRACE E. MAYO AND  
AND FRANK F. MAYO.

To the Honorable, the Judges of the United States  
District Court for the Southern District of Cali-  
fornia, Central Division:

Nippon Yusen Kabushiki Kaisya, a corporation  
(sued herein under the name of N. Y. K. Lines, Nip-  
pon Yusen Kaisha Steamship Co., a corporation,  
and Nippon Yusen Kaisha Kabushiki, a corporation  
[196] of the Empire of Japan), as respondent here-  
in and as claimant for and on behalf of the respond-  
ent Motor Vessel "Sakito Maru", her motors, tackle,  
apparel, furniture, etc., in answer to the libel in in-  
tervention filed herein by Grace E. Mayo and Frank  
F. Mayo, individually and as administrators of the  
estate of Roy A. Mayo, deceased, admits, denies and  
alleges as follows:

As to the first cause of action of libelant in inter-



vention Grace E. Mayo, as administratrix of the estate of Roy A. Mayo:

1. Alleges claimant-respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of Articles First, Second, Third, Sixth, Eighth, Fourteenth and Sixteenth, and therefore, on that ground, denies said allegations.

2. Answering Article Fourth, admits that the Motor Vessel "Sakito Maru" is a foreign vessel, that S. Sato was the master thereof and that respondent Nippon Yusen Kabushiki Kaisya, a corporation of the Empire of Japan, was the owner thereof at all times mentioned in said amended libel.

3. Answering Article Fifth, admits that the fishing barge "Olympic II" was at all times in said amended libel mentioned an American vessel and that Hermosa Amusement Corporation, Ltd., a corporation, was owner thereof. Alleges that the master of said "Olympic II" at all times in said amended libel mentioned was Joakim M. Andersen.

4. Answering Article Seventh, admits that on September 4, 1940, at or about the hour of 7:10 o'clock A. M., the fishing barge "Olympic II" was anchored on the high seas of the Pacific Ocean at a point approximately  $3\frac{1}{2}$  nautical miles in a direction  $162^{\circ}$  true from the lighthouse at the end of the west breakwater at the entrance to Los Angeles Harbor, California. Except as [197] herein expressly admitted, denies each and every allegation of Article Seventh.

5. Answering Article Ninth, admits that at about



the hour of 7:00 o'clock A. M., the "Sakito Maru" was inward bound to the Port of Los Angeles, and alleges that said vessel was proceeding on a course of 340° true, and that approximately ten minutes later the "Sakito Maru" reached the position of the "Olympic II". Except as herein expressly admitted, denies each and every allegation of Article Ninth.

6. Answering Article Tenth, admits that on September 4, 1940, at or about the hour of 7:10 o'clock A. M., the fishing barge "Olympic II" was anchored on the high seas of the Pacific Ocean approximately 3½ nautical miles and in a direction 162° true from the lighthouse at the end of the west breakwater at the entrance to Los Angeles Harbor; admits that at said time and place the weather was misty and the visibility was limited; admits that at said time and place the "Sakito Maru" was proceeding to the Port of Los Angeles, but denies that the "Sakito Maru" was proceeding at a high or at an excessive rate of speed; denies that said vessel was improperly manned; denies that it did not have a competent and/or proper lookout on watch; denies that it did not have competent and proper officers attending to their duties; denies that it was improperly, carelessly and negligently navigated and/or operated either as alleged in the libel in intervention or otherwise; denies that by reason of the premises in the libel in intervention the "Sakito Maru" ran into and collided with the "Olympic II", but admits that the "Sakito Maru" ran into and collided with the "Olympic II", striking and breaking her amidships; admits

that said collision was caused, among other faults on her part, by the failure of the "Olympic II" to give and maintain [198] proper warning signals and by her failure to post and notify shipping of the location of the anchored "Olympic II"; denies that immediately after said collision, or at any time, the "Sakito Maru" was negligently and/or carelessly operated so as to permit her to back away from the "Olympic II", allowing the "Olympic II" to sink almost immediately, but admits said "Olympic II" did sink shortly following the collision. Except as herein expressly admitted, or otherwise denied, denies each and every allegation of Article Tenth.

7. Answering Article Eleventh, alleges claimant-respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation that Roy A. Mayo was aboard the "Olympic II" when it was struck by the "Sakito Maru", and therefore, on that ground, denies said allegation; denies that the "Sakito Maru" or her master saw Roy A. Mayo aboard the "Olympic II"; admits that, following the collision, the master of the "Sakito Maru" saw the "Olympic II" was in imminent danger of sinking; admits that the "Sakito Maru" was then and there equipped with lifeboats. Except as herein expressly admitted or otherwise denied, denies each and every allegation of Article Eleventh.

8. Admits the allegations of Article Twelfth.

9. Answering Article Thirteenth, alleges claimant-respondent is without knowledge or information sufficient to form a belief as to the truth of the alle-

gation that Roy A. Mayo was cast into the water from the "Olympic II" and drowned, and therefore, on that ground, denies said allegation; admits the negligent operation and maintenance of the "Olympic II", and the unseaworthy condition thereof; denies that Grace E. Mayo has been damaged in the sum of \$50,000, or in any sum, or at all. [199] Except as herein expressly admitted or otherwise denied, denies each and every allegation of Article Thirteenth.

10. Answering Article Fifteenth, admits that on September 7, 1940, the libel in intervention of Grace E. Mayo was filed in the above-entitled Court, that the marshal thereof seized said motor vessel "Sakito Maru" under monition issued by said Court, and that claimant-respondent filed a stipulation for the release of said vessel in the sum of \$10,000. Except as herein expressly admitted, denies each and every allegation of Article Fifteenth.

11. Denies the allegations of Article Seventeenth.

As to the second separate cause of action of Grace E. Mayo, individually:

1. Answering Article First, claimant-respondent incorporates herein as though fully set forth again its admissions, denials and allegations in answer to the first cause of action of the **amended libel in intervention**.

2. Denies the allegations of Article Second.

As to the Third Separate and Distinct Cause of Action of Frank F. Mayo, as Co-administrator of the Estate of Roy A. Mayo, Deceased:

1. Answering Article First, claimant-respondent incorporates herein as though fully set forth again its admissions, denials and allegations in answer to the first cause of action of the amended libel in intervention.

2. Alleges claimant-respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations of Articles Second and Third and therefore, on that ground, denies said allegations. [200]

3. Answering Article Fourth, alleges claimant-respondent is without knowledge or information sufficient to enable it to form a belief as to the truth of the allegation that Roy A. Mayo was cast into the water from the "Olympic II" and drowned, and therefore, and on that ground, denies said allegation; admits the negligent operation and maintenance of the "Olympic II" and the unseaworthy condition thereof; denies that Frank F. Mayo has been damaged in the sum of \$25,000, or in any sum, or at all. Except as herein expressly admitted or otherwise denied, denies each and every allegation of Article Fourth.

As to the Fourth Separate Cause of Action of Frank F. Mayo, Individually:

1. Answering Article First, claimant-respondent incorporates as though fully set forth again its admissions, denials and allegations in answer to the third cause of action of the amended libel in intervention.

2. Denies the allegations of Article Second.



Further Answering and as a First Separate and Affirmative Defense to the Amended Libel in Intervention and all Causes of Action Thereof, Claimant-Respondent Alleges:

1. At all times herein mentioned respondent, Nippon Yusen Kabushiki Kaisya, was a corporation organized and existing under the laws of the Empire of Japan and was the owner and operator of the Japanese Motor Vessel "Sakito Maru".

2. Upon information and belief that Hermosa Amusement Corporation was at all times herein mentioned, and now is, a corporation duly organized and existing under and by virtue of the laws of the State of California and was at all times the owner of the fishing barge "Olympic II", and of her tackle, apparel, [201] furniture, appurtenances and boats.

3. On September 4, 1940, while said "Sakito Maru" was bound on a voyage from New York to Yokohama via Los Angeles, said "Sakito Maru" came into collision with the fishing barge "Olympic II" then anchored on the high seas of the Pacific Ocean more than a marine league from the shore of the State of California and approximately  $3\frac{1}{2}$  nautical miles distant from and in a direction  $162^{\circ}$  true from the lighthouse at the end of the west breakwater at the entrance to Los Angeles Harbor, California; that as a result of said collision the "Olympic II" and the "Sakito Maru" were each badly damaged and the "Olympic II" sank shortly following the collision.

4. Upon information and belief that said collision occurred in the following manner:



The fishing barge "Olympic II", a schooner built sixty-three years ago, was recently converted into a pleasure fishing barge. The "Olympic II" had an iron hull, was approximately two hundred thirty-eight (238) feet in length and thirty-eight (38) feet in width, with a depth of twenty-two (22) feet. Except for a bulkhead near the stem, said fishing barge had no other bulkheads, so that her lower hold was open from the bulkhead aforementioned to the stern. There were stowed in this open lower hold approximately fifteen hundred (1500) tons of ballast, consisting of gravel, sand and heavy cement blocks.

At the time of the collision aforementioned, at or about 7:10 o'clock A. M., on or about September 4, 1940, the "Olympic II", unknown to the master and officers of the "Sakito Maru", was anchored on the high seas of the Pacific Ocean more than a marine league from the shore of the State of California and approximately 3½ nautical miles distant from, and in a direction 162° true from [202] the lighthouse at the end of the west breakwater at the entrance to Los Angeles Harbor, California, without permit or license from any governmental body or agency, directly in the steamer lane for all vessels plying between Los Angeles Harbor and the Panama Canal and other ports between Los Angeles Harbor and the Panama Canal. At the time of the collision there was no person aboard said fishing barge licensed by the United States Bureau of Marine Inspection and Navigation, either in the capacity of master, officer, able bodied seaman, or ordinary seaman. At said

time there were aboard the "Olympic II" three employees of the Hermosa Amusement Corporation, Ltd., three employees in a concession or eating place aboard said fishing barge and eighteen people or passengers who had been transported to said fishing barge from the shore that morning aboard shore boats operated by the Hermosa Amusement Corporation, Ltd., for the purpose of engaging in pleasure fishing.

The "Sakito Maru" at the time of the collision was on a voyage from New York to Yokohama via the Panama Canal and Los Angeles Harbor. Until immediately prior to the collision and since noon, September 3, 1940, the "Sakito Maru" was steering a course of 340° true. For several hours prior to the events in question on September 4, 1940, there had been on the bridge of the "Sakito Maru", in charge of her navigation, the first officer and, in addition, an apprentice officer and a quartermaster, acting as helmsman. At about 7 o'clock A. M. of said day S. Sato, master of the "Sakito Maru", came up on the bridge and he and the other persons aforementioned remained on the bridge during the events hereinafter related and until and after the collision.

At 7 o'clock A. M., September 4, 1940, the "Sakito Maru" was proceeding on the course aforementioned, to-wit, 340° true, at a speed of about sixteen knots per hour, with her engines [203] at full ahead. At this time the weather was clear with practically full visibility off the starboard and port sides of the vessel and to the stern but some distance ahead of

the vessel there appeared to be a haze or mist. At about 7:03 o'clock A. M. the range of visibility ahead decreased to approximately one-half ( $1\frac{1}{2}$ ) a mile, and at this time the speed of the vessel was reduced to slow ahead, the sounding of regulation fog signals was commenced on the whistle and an A. B. sailor took the position of lookout at the bow of the vessel. Commencing with the time aforementioned, fog signals were sounded by the apprentice officer of the "Sakito Maru" at approximately one minute intervals, each signal consisting of a single blast on the whistle of from about five (5) to six (6) seconds in duration, and these signals were continually sounded at the intervals and in the manner mentioned, until the time of the collision. During this period the master and chief officer maintained a careful watchfulness and the helmsman remained at the wheel, as aforementioned.

At about 7:09 o'clock A. M., while the "Sakito Maru" was proceeding with her engines at slow ahead, on a course of  $340^{\circ}$  true, as aforementioned, and while the master, first officer, an apprentice officer and a helmsman were on the bridge in the performance of their duties, as aforementioned, and a lookout was stationed at the bow of the vessel, as aforementioned, the lookout at the bow sighted the fishing barge "Olympic II" dead ahead of the "Sakito Maru" and lying at nearly right angles to her projected course and immediately notified the officers on the bridge of the presence of the fishing barge. Immediately thereafter the helm of the "Sak-

ito Maru" was put hard to starboard, in an effort to change the course of the "Sakito Maru" so as to clear the stern of said fishing barge, the engines were stopped and immediately thereafter put full astern [204] and three blasts were sounded on the whistle.

Because of the distance required to change the heading of a vessel of the size and nature of the "Sakito Maru", the vessel had only commenced to swing or change her heading at the time of the impact. The collision occurred at about 7:10 o'clock A. M., the stem of the "Sakito Maru" striking the port side of the fishing barge "Olympic II" nearly midship. The impact checked the forward momentum of the "Sakito Maru", and since at that time the engines were turning full astern and the propellers were in reverse motion, the "Sakito Maru" was caused to immediately gain a slight sternway and to separate from the barge. The engines were stopped at about the time of the impact but the time required to stop the propellers in their reverse motion was sufficient to permit the vessel to gain sternway and to cause her to separate from the barge immediately after the impact, as aforementioned.

Upon the "Sakito Maru" being separated from the fishing barge, the master of the "Sakito Maru" considered it would be an unwise and a hazardous undertaking to attempt to move the vessel forward again in an effort to nose the bow into the hole stove in the side of the barge, it being possible and probable that such a maneuver might have resulted in the "Sakito Maru" striking the barge in a different place or that the forward momentum could not be



checked before the fishing barge might be pushed or caused to list, thus further endangering the lives and safety of those aboard the fishing barge. Accordingly, after the "Sakito Maru" had separated from the fishing barge and her engines were stopped, the engines were again put astern and the vessel backed a sufficient distance to give safe and proper clearance for dropping anchor. While the vessel was backing for this purpose, preparations were under way for dropping the anchor and for lowering a lifeboat. The engines [205] of the "Sakito Maru", after this maneuver, were stopped at 7:15, the anchor was let go at 7:17, the engines were ordered slow ahead to check the sternway at 7:18 and the engines were then stopped again at 7:19. Immediately after the engines were stopped at 7:19 and the vessel came to rest in the water, a lifeboat was lowered at 7:20 A. M.

In the meantime the "Olympic II" had sunk and the lifeboat, after being launched, was immediately directed to the area where the barge had sunk for the purpose of locating and rescuing any persons who might be found in the water. This search was continued by the lifeboat for two hours, during which time the "Sakito Maru" remained at anchor in the position aforementioned. Before the lifeboat returned to the "Sakito Maru" a Coast Guard cutter arrived at the scene and joined with other small boats in the vicinity to search for persons who might be found in the water. When this search was unavailing and no further assistance could be rendered by



the "Sakito Maru", the vessel hoisted anchor at 11:57 A. M. and proceeded to the outer harbor of Los Angeles Harbor, where the vessel anchored until towed to shipyards for survey and temporary repairs.

At no time prior to the sighting of the fishing barge "Olympic II" by the lookout on the "Sakito Maru" were any bells, signals or other warnings from said fishing barge heard by anyone aboard the "Sakito Maru", nor were any bells, signals or other warnings from any other fishing barge or craft anchored in the vicinity of the fishing barge "Olympic II" heard by anyone aboard the "Sakito Maru".

5. At the time of said collision and at all times prior thereto, the "Sakito Maru" was proceeding at a moderate rate of speed, having careful regard to the existing circumstances and [206] conditions, was keeping a sharp lookout and in all respects complying with the rules and laws of navigation; that the "Sakito Maru" was at all times navigated with due caution and skill by the master and officers thereof, and that said collision was not caused by any fault, negligence or want of due care on the part of respondent, Nippon Yusen Kabushiki Kaisya, respondent, S. Sato, or of said "Sakito Maru", or of her officers or crew, or any of them.

6. Claimant-respondent is informed and believes that the said collision and consequent damage to the "Sakito Maru" and the loss of the "Olympic II" were entirely due to the fault of the "Olympic II" and of those in charge of that vessel, and upon such information and belief claimant-respondent alleges

that said vessel was at fault in the following, among other, particulars:

A. Said fishing barge was entirely open and unprotected by collision bulkheads in her lower hold, from a point twenty (20) feet abaft her stem, for a distance of some two hundred and eighteen (218) feet to her stern.

B. There were stowed in said open and unprotected lower hold throughout the entire length of said fishing barge, fifteen hundred (1500) tons of ballast, consisting, among other things, of rock and gravel and heavy cement blocks.

C. There was carried aboard said fishing barge, only one lifeboat, capable of accommodating only twenty persons, which was so affixed to said fishing barge that it required a boom and a winch to raise and lower said lifeboat into the water, which operation would consume at least five minutes time.

D. The "Olympic II" was grossly undermanned and incompetently manned, there being no person aboard said fishing barge as an officer or a member of the crew thereof, who held any [207] license from the Bureau of Marine Inspection and Navigation or who was experienced in navigation or who possessed an adequate or any knowledge of the rules for the prevention of collisions.

E. Although approximately three months prior to the date of said collision the owner of said fishing barge, Hermosa Amusement Corporation, Ltd., was ordered by the Bureau of Marine Inspection and Navigation to make various structural and other

changes and additions of equipment to correct the unseaworthy and unsafe condition of said fishing barge, said Hermosa Amusement Corporation, Ltd., wholly failed and neglected to make any of said changes and wholly and utterly ignored the requirements of the Bureau of Marine Inspection and Navigation. The aforesaid requirements of the Bureau of Marine Inspection and Navigation with which said Hermosa Amusement Corporation, Ltd., failed to comply included among other things the following:

(a) The structure comprising the keel, stem, sternframe, keelsons, stringers, frames, beams, decks, bulkheads, ceilings, sheathings, planking, plating, fastenings, etc., including also the frames, beams, plating or planking of superstructures, deck houses, etc., and all holds, bilges, peaks and tanks, shall be thoroughly inspected and necessary tests shall be made to determine actual conditions and suitable repairs, renewals or replacements effected where found necessary.

(b) A sufficient number of transverse watertight bulkheads shall be fitted so that the vessel will remain afloat with positive stability in the event any one main compartment is flooded.

(c) The structural strength of the vessel shall be in all respects sufficient.

(d) All spars, rigging and gear shall be placed in a [208] safe condition, or removed if unnecessary.

(e) An inclining test shall be made by a representative of the Bureau.

(f) All gangways, accommodation ladders and stairways, shall have suitable manropes on each side.

All side gangways and ladders shall be of rugged construction. All running gear such as tackles, hooks, shackles, bridles, etc., shall be of suitable dimensions and in good condition.

(g) There shall be one set of side lights suitably screened visible at least two miles.

(h) There shall be an efficient fog bell.

(i) There shall be one mechanical fog horn.

(j) There shall be a basket or other efficient signal for the purpose of indicating the side of the fishing vessel approaching vessels may pass.

(k) There shall be at least ten square feet of deck space available for each person allowed on board.

(l) A log book shall be kept in which a daily record of the number of persons on board during the day shall be entered.

(m) All bilges, holds, compartments, etc., shall be free of all rubbish, waste, oil, etc.

(n) Approved lifeboats with suitable launching arrangements and approved life rafts or buoyant apparatus, shall be carried sufficient to provide accommodations for all persons on board. Fifty percent of such accommodations may be in lifeboats, and fifty percent may be in life rafts or buoyant apparatus.

(o) There shall be floodlights on both sides of the vessel on vessels with persons on board other than crew during the night time. [209]

(p) A sufficient complement of licensed officers and certificated seamen, including lifeboatmen, shall be carried as may be required to adequately deal with



any emergency that may arise, and a licensed deck officer shall be in command of the vessel.

(q) Minimum crew while vessel is at anchor with persons other than crew shall be :

1 licensed master

1 licensed engineer

Sufficient certificated lifeboatmen to adequately launch and man all lifesaving equipment, 65% of which shall be able seamen.

F. The persons aboard said fishing barge in the employ of the Hermosa Amusement Corporation, Ltd., who were supposedly the crew thereof, were grossly incompetent, negligent and inattentive to their duties.

G. The "Olympic II" had no proper or sufficient, or any, lookout.

H. The "Olympic II" did not have an adequate or proper fog bell, or other sound-signalling device, and did not sound proper and regulation fog signals so as to provide a warning to the approaching "Sakito Maru".

I. The "Olympic II", the persons aboard said fishing barge in the employ of the Hermosa Amusement Corporation, Ltd., and the Hermosa Amusement Corporation, Ltd., were negligent and at fault in other respects as to which the claimant is not now advised, but as to which it begs leave to offer proof of, as and when advised, and to amend this answer accordingly.

7. As a result of said collision, the "Sakito Maru" was damaged and respondent and claimant, Nippon Yusen Kabushiki Kaisya, [210] as owner of said

vessel, has sustained damage for cost of repairs and for loss of use of the "Sakito Maru" in an amount which has not yet been ascertained but which is estimated at the sum of \$60,000, no part of which has been paid.

Further Answering and as a Second Separate and Affirmative Defense to the Amended Libel in Intervention and all Causes of Action Thereof, Claimant-Respondent Alleges:

The libel in intervention fails to state a cause of action within the admiralty and maritime jurisdiction of this honorable Court.

Further Answering and as a Third Separate and Affirmative Defense to the Amended Libel in Intervention and all Causes of Action Thereof, Claimant-Respondent Alleges:

The libel in intervention fails to state a cause of action under the Wrongful Death on the High Seas Act (46 U. S. C. 761) or under the California Death Statute (C. C. P. 377), or under any other federal or state death statutes, and this honorable Court is without jurisdiction in the premises.

Further Answering and as a Fourth Separate and Affirmative Defense to the Amended Libel in Intervention and to the Second and Fourth Causes of Action Thereof, Claimant-Respondent Alleges:

1. Refers to all of the Articles contained in the First Separate and Affirmative Defense herein, and by such reference incorporates said articles as a part of this Fourth Separate and Affirmative Defense as if set out here at length.

2. Upon information and belief, if Roy A. Mayo

lost his life in said collision, his death occurred upon the high seas more [211] than a marine league from the shore of and outside the territorial jurisdiction of the State of California, and that libelants in intervention Grace E. Mayo, individually, and Frank F. Mayo, individually, are not proper parties in interest to file or maintain this action and this honorable Court is without jurisdiction in the premises.

Further Answering and as a Fifth Separate and Affirmative Defense to the Amended Libel in Intervention and to the Second, Third and Fourth Causes of Action Thereof, Claimant-Respondent Alleges:

The second, third and fourth causes of action alleged in the amended libel in intervention are improperly joined and as to those causes of action the respondent Motor Vessel "Sakito Maru" has never been brought within the jurisdiction of this honorable Court in this action.

Further Answering and as a Sixth Separate and Affirmative Defense to the Amended Libel in Intervention and to all Causes of Action Thereof, Claimant-Respondent Alleges:

1. Refers to all of the Articles contained in the First Separate and Affirmative Defense herein, and by such reference incorporates said articles as a part of this Fifth Separate and Affirmative Defense as if set out here at length.

2. Upon information and belief, if Roy A. Mayo lost his life in the said collision, and if said collision was due to or contributed to by any fault or neglect on the part of the "Sakito Maru", which claimant-respondent denies as aforesaid, the death of Roy A.

Mayo was proximately caused or contributed to by carelessness, recklessness, and negligence on the part of Roy A. Mayo, in that [212] he knew or should have known that the place on the high seas of the Pacific Ocean at which the "Olympic II" was anchored and where he voluntarily went, was in the steamer lane and in a place of danger and that said barge constituted a menace to navigation, and knew or should have known that the "Olympic II" was improperly manned and equipped, and therefore should have anticipated that said fishing barge might be in collision and that he might be injured or killed thereby; alleges that Roy A. Mayo was negligent in other respects as to which claimant-respondent is not now informed but as to which it begs leave to offer proof as and when advised and to amend this answer accordingly.

Wherefore, claimant-respondent prays that the said amended libel in intervention be dismissed, and that claimant-respondent have its costs of suit herein incurred, and such other and further relief as to the Court may seem just and proper.

LILLICK, GEARY, McHOSE  
& ADAMS

JOHN C. McHOSE  
JAMES L. ADAMS

Proctors for Claimant-Respond-  
ent

634 South Spring Street,  
Los Angeles, California,  
Trinity 6411. [213]

(Duly verified.) [214]

[Endorsed]: Filed May 13, 1941. [216]



In the District Court of the United States for  
the Southern District of California, Central  
Division.

In Admiralty—No. 1138-BH

HERMOSA AMUSEMENT CORPORATION,  
LTD., a corporation,

Libelant,

vs.

THE MOTOR VESSEL "SAKITO MARU", her  
engines, tackles, etc., et al.,

Respondents,

NIPPON YUSEN KABUSHIKI KAISYA, a  
corporation,

Claimant and Respondent,

HERMOSA AMUSEMENT CORPORATION,  
LTD., a corporation, et al,

Third Party Respondents,

GRACE E. MAYO and FRANK F. MAYO,  
Libelants in Intervention.

### FINAL DECREE

The above entitled cause came on regularly for  
hearing on September 16th, 17th, 18th, 19th, 23rd  
and 24th, 1941, Wayland & Stearns, Esqs., appear-  
ing for Grace E. Mayo, Libelant in Intervention,  
David I. Lippert, Esq., appearing for Frank F.  
Mayo, Libelant in Intervention, and Lillick, Geary,  
McHose and Adams, Esqs., appearing for Nippon

Yusen Kabushiki Kaisya, a corporation; all of the evidence both oral and documentary of Libelants in Intervention and Claimant and Respondent having been heard in open court on the sole issue of liability, the cause having been submitted to the court on September 24, 1941, the Libelants in Intervention and Claimant and Respondent submitted briefs and reply briefs to the court;

And it appearing that the court has filed, rendered and [217] adopted its memorandum of opinion on the 31st day of October, 1941, as its Findings of Fact and Conclusions of Law, and the same is made a part hereof;

That following the determination of liability further hearings on November 14th and 15th, 1941, on Libelants in Intervention death claim on the original Libel in Intervention and said Amended Libel in Intervention were had, and it was stipulated in open court by and between Proctors for Libelants in Intervention, Grace E. Mayo and Frank F. Mayo, and Proctors for Claimant and Respondent, Nippon Yusen Kabushiki Kaisya, a corporation, that said Libelants in Intervention, Grace E. Mayo and Frank F. Mayo, have and recover the sum of Forty-one Hundred (\$4100.00) Dollars as damages for the death of said Roy A. Mayo, deceased;

And it further appearing to the court that at the time of the collision, to-wit, on September 4, 1941, that Roy A. Mayo, 15 year old son of Libelants in Intervention herein, was on board the "Olympic II" as a passenger and came to his death as a result

of said collision; that Libelants in Intervention, Grace E. Mayo and Frank F. Mayo, are the duly appointed, qualified and acting administrators of the Estate of said Roy A. Mayo, deceased;

That the Hermosa Amusement Corporation, Ltd., a corporation, and J. M. Andersen, Third Party Respondents, through their respective counsel, have stipulated that the amount hereinabove recited is reasonable and a proper award for the above described damages suffered by the Libelants in Intervention occasioned by the collision of the Motor Vessel "Sakito Maru" and the Fishing Barge "Olympic II".

Now, Therefore, It Is Ordered, Adjudged and Decreed that Libelants in Intervention, Grace E. Mayo and Frank F. Mayo, have and recover of the Claimant and Respondent herein, Nippon Yusen Kabushiki Kaisya, a corporation, and its stipulators for costs and value, the sum of Forty-one Hundred (\$4100.00) Dollars, said amount [218] having been stipulated by Hermosa Amusement Corporation, Ltd., a corporation, as a reasonable and proper award for the above described damages suffered by the Libelants in Intervention occasioned by the collision of the Motor Vessel "Sakito Maru" and the Fishing Barge "Olympic II", with interest thereon at the rate of seven percent (7%) per annum from the date hereof until paid; and it is hereby further

Ordered, Adjudged and Decreed that the Libels in Intervention herein and the petition and amended

petition of the Respondent, Nippon Yusen Kabushiki Kaisya, to bring in Third Party Respondents under Admiralty Rule 56, be and each and all of the same are hereby dismissed as to the Respondents and Third Party Respondents, Hermosa Amusement Corporation, Ltd., and J. M. Andersen, owner and master, respectively, of the "Olympic II", and that said last named Respondents and Third Party Respondents have and recover their costs of said Third Party Petitioner and of the Libelants in Intervention, taxed in the sum of . . . . ., (\$88.55) Dollars; and it is hereby further

Ordered, Adjudged and Decreed that within ten (10) days after the entry of this decree and notice thereof to Proctors for the parties against whom this decree runs, the stipulators for costs and value on the part of said parties cause the engagements of their respective stipulations to be performed or show cause within four (4) days after the expiration of said ten (10) days or on the first day of jurisdiction thereafter why execution should not issue against their goods, chattels and lands in accordance with the terms of their respective stipulations.

Dated : December 19, 1941.

BEN HARRISON,

District Judge.

CLUFF & BULLARD,

By CLUFF & BULLARD,

Proctors for Hermosa Amusement Corporation, Ltd., and  
J. M. Andersen.



Approved as to Form:

WAYLAND & STEARNS,  
By FRANK L. STEARNS,  
Proctors for Libelants in  
Intervention. [219]

[Endorsed]: Filed Dec. 19, 1941. [220]

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In the District Court of the United States for  
the Southern District of California, Central  
Division

In Admiralty—No. 1138-BH

HERMOSA AMUSEMENT CORPORATION,  
LTD., a Corporation,

Libelant,

vs.

THE MOTOR VESSEL "SAKITO MARU", her  
engines, tackles, etc., et al,

Respondents,

NIPPON YUSEN KABUSHIKI KAISYA, a  
Corporation,

Claimant and Respondent,

HERMOSA AMUSEMENT CORPORATION,  
LTD., a Corporation, et al,

Third Party Respondents,

GRACE E. MAYO and FRANK F. MAYO,

Libelants in Intervention.

SATISFACTION OF FINAL DECREE

Receipt is hereby acknowledged by libelants

above-named of the sum of \$4100.00 and the further sum of \$59.79, representing interest in full on the first named amount, paid by Nippon Yusen Kabushiki Kaisya and Fidelity and Deposit Company of Maryland, in full satisfaction of the Final Decree entered herein December 19, 1941, in Min. Book 24, Page 332, in favor of Grace E. Mayo and Frank F. Mayo, libelants in intervention, and the Clerk of the above-entitled Court is hereby authorized and directed to enter satisfaction of said decree of record.

Dated: Los Angeles, California, March 4, 1942.

WAYLAND & STEARNS,

By FRANK L. STEARNS,

Proctor for Grace E. Mayo,  
Libelant in Intervention.

DAVID I. LIPPERT,

Proctor for Frank F. Mayo,  
Libelant in Intervention.

[221]

(Duly verified.)

[Endorsed]: Filed Mar. 25, 1942. [222]

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In the District Court of the United States, for  
the Southern District of California, Central  
Division, in Admiralty.

No. 1148-Y

HELEN McGRATH; HELEN McGRATH, as Administratrix of the estate of PETER BER-

NARD McGRATH, deceased; HELEN McGRATH, as Special Administratrix of the estate of JAMES B. McGRATH, deceased;

Libelants,

vs.

JAPANESE MOTOR VESSEL "SAKITO MARU", her engines, tackle, apparel, furniture and equipment, NIPPON YUSEN KABUSHIKI KAISYA, a corporation, HERMOSA AMUSEMENT CORPORATION, a corporation, FIRST DOE, SECOND DOE, THIRD DOE, FIRST DOE CORPORATION, a corporation and SECOND DOE CORPORATION, a corporation,

Respondents,

NIPPON YUSEN KABUSHIKI KAISYA, a corporation,

Claimant.

AMENDED LIBEL IN REM AND IN PERSONAM FOR WRONGFUL DEATH ARISING OUT OF COLLISION

To the Honorable the Judges of the United States District Court for the Southern District of California:

The amended libel of Helen McGrath, individually, as administratrix of the estate of Peter Bernard McGrath, deceased, and as special administratrix of the estate of James B. McGrath, deceased, libelant, against the Japanese Motor Vessel "Sa-

kito Maru", her engines, tackle, apparel, furniture and equipment, Nippon Yusen Kabushiki Kaisya, a corporation, Hermosa Amusement Corporation, a corporation, First Doe, Second Doe, Third Doe, First Doe Corporation, a corporation, and Second Doe Corporation, a corporation, respondents, in a cause of damages for death at sea, civil and maritime, alleges:

## FIRST CAUSE OF LIBEL [460]

### I.

Peter Bernard McGrath died intestate at sea on or about September 4, 1940, under the circumstances hereinafter set forth. At the time of his death, said decedent was a resident of the County of Los Angeles, State of California, and left surviving him as his heirs at law his widow, Helen McGrath, and his minor children, Patricia McGrath and Karen McGrath.

On or about October 11, 1940, the Superior Court of the State of California, in and for the County of Los Angeles, in proceedings duly had and taken therefor in the matter of the estate of said deceased, numbered 198018 on the records of said court, duly gave and made its order, wherein and whereby libelant was appointed the administratrix of the estate of said deceased. Libelant thereupon duly qualified as such administratrix and letters of administration of the said estate were issued to her by the said Superior Court and by the Clerk thereof and libelant ever since October 11, 1940, has been



and now is the duly appointed, qualified and acting administratrix of the estate of said deceased. Said Helen McGrath, said Patricia McGrath and said Karen McGrath were, and each of them was dependent upon said Peter Bernard McGrath for their support and maintenance, and said libelant, as such administratrix of the estate of said decedent, files this libel for the benefit of said Helen McGrath, Patricia McGrath and Karen McGrath and any other person or persons who may be entitled to recover damages on account of the death of said decedent as an heir or heirs, or a dependent relative or dependent relatives of said decedent.

## II.

Libelant does not know the true names of First Doe, Second Doe and Third Doe, First Doe Corporation, a corporation, and Second Doe Corporation, a corporation, and therefore designates said parties by fictitious names and prays leave to amend this libel to state their true names as soon as they are ascertained [461] by her.

## III.

Respondent Motor Vessel "Sakito Maru" is a Japanese Motorship of the burden of 7126 gross tons, or thereabouts, and is now, or during the currency of process herein will be, afloat upon the navigable waters of the harbor of Los Angeles and within the jurisdiction of this court. Libelant is informed and believes, and upon such information

and belief alleges, that respondent Nippon Yusen Kabushiki Kaisya, a corporation, was and is the owner of said respondent Motor Vessel "Sakito Maru". Respondents First Doe and First Doe Corporation are joined in this libel to designate any persons that may be found to be an owner or an operator of said Motor Vessel "Sakito Maru". Libelant is informed and believes, and upon such information and belief alleges, that Nippon Yusen Kabushiki Kaisya at all times herein mentioned was and it now is a corporation organized and existing under and by virtue of the laws of the Empire of Japan, and at all times herein mentioned was and it now is doing business in the Southern District of California.

#### IV.

The barge "Olympic II" at all times herein mentioned and up to the time of her total loss as hereinafter alleged, was an unrigged vessel documented under the laws of the United States of America, of the burden of 1766 gross tons, or thereabouts, owned and operated by respondent Hermosa Amusement Corporation. Said respondent Hermosa Amusement Corporation was at all times herein mentioned, and it now is a corporation organized and existing under and by virtue of the laws of the State of California. Respondents Second Doe and Second Doe Corporation, a corporation, are joined in this libel to designate parties who may be proved to have had some interest in said barge at the times herein mentioned as owner or operator thereof. At

all times herein mentioned Third Doe was [462] the master of said barge "Olympic II".

#### V.

At all times herein mentioned said barge "Olympic II" was engaged in the business of furnishing facilities for pleasure fishing to passengers for hire and was anchored at all times herein mentioned at a point in the Pacific Ocean about  $31\frac{1}{4}$  nautical miles,  $162^{\circ}$  true from the lighthouse at the end of the West Breakwater at the entrance to Los Angeles Harbor. Said point is more than a marine league from the actual shore of the State of California, but less than a marine league from the line marking the limits of San Pedro Bay, to-wit, a line drawn between Point Fermin on the west and Point Lasuen on the east. Libelant is informed and believes, and upon such information and belief alleges, that said place of anchorage of said barge was and is within the territorial waters of the State of California, but if it should be found by the court that said point is more than a marine league from the shore of California, within the meaning of the United States Statute relating to Death on the High Seas by Wrongful Act (Title 46 USCA, Section 761), libelant claims the benefit of the said statute.

#### VI.

On or about September 4, 1940, said Peter Bernard McGrath and his minor son, James B. McGrath, in consideration of a sum of money paid by said Peter Bernard McGrath to Hermosa Amusement Corporation and its duly authorized agents,

were conveyed by said respondent Hermosa Amusement Corporation to said barge "Olympic II" at the place of anchorage aforesaid, and were furnished a place on said barge from which to fish; and from about seven o'clock in the morning of September 4, 1940, until the collision hereinafter referred to, said Peter Bernard McGrath and said James B. McGrath were aboard said barge engaged in pleasure fishing. [463]

### VII.

On or about said 4th day of September, 1940, at or about 7:10 A. M. on said day, a collision occurred between the respondent Motor Vessel "Sakito Maru" and the said barge "Olympic II" as a result of which collision said "Olympic II" was sunk and became a total loss, and said Peter Bernard McGrath and James B. McGrath were struck, bodily injured and cast into the sea and they and each of them then and there met their deaths by drowning.

### VIII.

Libellant alleges on information and belief that the circumstances of said collision were as follows:

Said barge "Olympic II" was anchored, and for some months prior to the date of the collision had been anchored directly in the steamer lane at the entrance of Los Angeles Harbor; that is to say, in the path regularly taken by vessels approaching said harbor from the south. From some time prior to seven o'clock on said morning of September 4, 1940, until the time of the collision, the weather was foggy with a visibility of some 500 yards and



the sea was smooth. The said respondent Motor Vessel "Sakito Maru" at all times herein mentioned up to the time of the collision was proceeding to the port of Los Angeles on a voyage from the port of New York. Her course was about 340° true and for some time prior to sighting the barge "Olympic II" she was proceeding at a speed of about sixteen knots. Said vessel claims to have reduced her speed somewhat prior to sighting said barge "Olympic II", but at all times prior to the collision said vessel continued at a speed which was immoderate under the conditions then prevailing. Said "Sakito Maru" continued at said immoderate speed and ran into and rammed said barge "Olympic II" at a point about amidships on the barge's port side, cutting deeply into said barge. Said "Sakito Maru" immediately backed away from said barge and anchored some distance away. Said "Olympic II" immediately filled with water and sank. As a result of the Collision said Peter Bernard McGrath and James B. McGrath, [464] among others, were cast into the water and drowned. No life boats were lowered from said barge. Said "Sakito Maru" did not lower any life boat until approximately half an hour after the collision.

## IX.

Libelant is informed and believes and upon such information and belief alleges that said collision and the consequent loss of the lives of Peter Bernard McGrath and James B. McGrath were due

to the negligence and gross fault of those navigating the said respondent vessel "Sakito Maru" and to the negligence and gross fault of those owning, operating and managing the said barge "Olympic II" in the following particulars, to-wit:

A. As respects the barge "Olympic II":

1. The said barge had no proper or sufficient lookout.
2. The officers and crew of said barge were incompetent, negligent and inattentive to their duties.
3. The said barge was in a grossly unseaworthy condition, without proper or adequate life-saving equipment, grossly under-manned and without competent personnel of any kind aboard.
4. Said barge was anchored at a point in the direct path of vessels approaching Los Angeles Harbor where she constituted a menace to navigation. The said place of anchorage was hazardous to those aboard said barge as well as to other vessels approaching Los Angeles Harbor.
5. The barge did not have an adequate fog bell and did not ring proper signals thereon.
6. Those in charge of the barge did not take proper steps to attempt to save the lives of the passengers immediately following the collision.
7. Those in charge of said barge were negli-

gent in other respects as to which libelant is not at present advised but as to which she begs leave to offer proof as and when advised and to amend this libel accordingly.

B. As respects the "Sakito Maru":

8. The "Sakito Maru" did not have a proper and sufficient lookout, properly stationed and attentive to his duties.
9. Her master, officers and crew were incompetent, [465] negligent, improperly stationed and inattentive to their duties.
10. She was proceeding at an immoderate rate of speed in the fog then and there prevailing.
11. She failed to stop and reverse immediately on sighting said barge.
12. She did nothing to avoid collision.
13. She failed to take immediate and proper measures on sighting said barge to alter her helm to avoid striking said barge.
14. She failed to blow proper signals when proceeding through fog.
15. She failed to take effective, immediate and efficient steps to come to the aid of those cast into the sea as a result of the collision.
16. She negligently maneuvered her engines in such manner that she drew away from said barge immediately after striking it, thus allowing said barge to sink in a very

short time, instead of keeping herself in contact with said barge and thereby causing said barge to remain afloat for a sufficient length of time to permit the rescue of those aboard.

17. She was negligent in other and further particulars of which libelant is not at present advised as to which libelant begs leave to offer proof as and when advised and to amend this libel accordingly.

### X.

Said Peter Bernard McGrath at the time of his death was 32 years old and was in good health and capable of earning and did earn a large sum of money, to-wit, about Five thousand dollars (\$5,000.) per annum, and regularly devoted a large part of his earnings to the support of his dependent wife and children. Libelant is 30 years old and the minor children of libelant and said decedent, Patricia and Karen McGrath are 8 years old and 3½ years old respectively. By the death of said Peter Bernard McGrath, his widow and minor children have been deprived of their means of support, and have suffered the loss of the society and comfort of their husband and father. In recovering the body of said deceased and in and about the funeral and burial of said body, the next of kin will be caused expense, to-wit, the sum of [466] Four hundred dollars (\$400.00) or thereabouts.



## XI.

By reason of the foregoing, libelant and the heirs and dependent relatives of said decedent have been damaged in the sum of One Hundred Thousand Dollars (\$100,000.) for which libelant prays reparation with interest.

## XII.

Section 377 of the Code of Civil Procedure of the State of California provides as follows:

“§ 377. WHEN REPRESENTATIVES MAY SUE FOR DEATH OF ONE CAUSED BY THE WRONGFUL ACT OF ANOTHER.

When the death of a person not being a minor, or when the death of a minor person who leaves surviving him either a husband or wife or child or children, is caused by the wrongful act or neglect of another, his heirs or personal representatives may maintain an action for damages against the person causing the death, or if such person be employed by another person who is responsible for his conduct, then also against such other person. In every action under this and the preceding section, such damages may be given as under all the circumstances of the case, may be just.”

Section 813 of the Code of Civil Procedure of the State of California provides in part as follows:

“§ 813. WHEN VESSELS, ETC., ARE LIABLE. THEIR LIABILITIES CONSTITUTE LIENS. All steamers, vessels and boats are liable:

“6. For injuries committed by them to persons or property, in this state.

“Demands for these several causes constitute liens upon all steamers, vessels, and boats, and have priority in their order herein enumerated, and have preference over all other demands; but such liens only continue in force for the period of one year from the time the cause of action accrued.”

### XIII.

All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court. [467]

## SECOND CAUSE OF LIBEL

### I.

Libelant is the mother of James B. McGrath, deceased. Peter Bernard McGrath, the father of said James B. McGrath, is dead. James B. McGrath at the time of his death was a minor of the age of 9½ years. He died at sea on or about September 4, 1940, under the circumstances hereinafter set forth.

### II.

Libelant hereby refers to Articles II, III, IV, V, VI, VII, VIII, IX and XIII of the First Cause of Libel herein, and by such reference incorporates said articles as a part of this Second Cause of Libel as if set out here at length.

## III.

Said James B. McGrath at the time of his death was in good health. Libelant is 30 years old and would have received pecuniary benefits from the earnings of James B. McGrath had he lived. Libelant has suffered by reason of his death the loss of the society and comfort of said minor son. In recovering the body of said deceased and in and about the funeral and burial of said body, libelant has been caused expense, to-wit, the sum of Four hundred dollars (\$400.), or thereabouts.

## IV.

By reason of the foregoing libelant has been damaged in the sum of Twenty-five Thousand Dollars (\$25,000.), for which libelant prays reparation with interest.

## V.

Section 376 of the Code of Civil Procedure of the State of California provides as follows:

“§ 376. FATHER, ETC.: MAY SUE FOR INJURY OR DEATH OF CHILD. A father (of a minor, or if the father is dead or the parents of said minor are living separate or apart and the mother of the minor then has care or custody of said minor, then) the mother, may maintain an action for the injury or death of (said) minor child, and a guardian for the injury or death of his ward, [468] when such injury or death is caused by the wrongful act or neglect of another. Such action may

be maintained against the person causing the injury, or death, or if such person be employed by another person who is responsible for his conduct, also against such other person.”

Section 813 of the Code of Civil Procedure of the State of California provides in part as follows:

“§ 813. WHEN VESSELS, ETC., ARE LIABLE. THEIR LIABILITIES CONSTITUTE LIENS. All steamers, vessels, and boats are liable:

\*            \*            \*

“6. For injuries committed by them to persons or property, in this state.

“Demands for these several causes constitute liens upon all steamers, vessels, and boats, and have priority in their order herein enumerated, and have preference over all other demands; but such liens only continue in force for the period of one year from the time the cause of action accrued.”

### THIRD CAUSE OF ACTION

#### I.

James B. McGrath died at sea on or about September 4, 1940, under circumstances hereinafter set forth. At the time of his death said decedent was a minor of the age of 91½ years and a resident of the County of Los Angeles, State of California, and left surviving him as his heir at law his mother,



Helen McGrath. Said decedent's father, Peter Bernard McGrath, met his death in the same calamity and libelant does not know at this time who, as between said Peter Bernard McGrath and said James B. McGrath, died first. On or about October 18, 1940, the Superior Court of the State of California, in and for the County of Los Angeles, in proceedings duly had and taken therefor in the matter of the estate of said James B. McGrath, deceased, numbered 198769 on the records of said court, duly gave and made its order wherein and whereby libelant was appointed the special administratrix of the estate of said deceased, and wherein and whereby libelant was [469] authorized to commence and maintain this libel. Libelant thereupon duly qualified as such special administratrix and special letters of administration of the said estate were issued to her by the said Superior Court and by the clerk thereof, and libelant ever since October 18, 1940, has been and now is the duly appointed, qualified and acting special administratrix of the estate of said deceased. Libelant as such special administratrix files this libel for the benefit of herself as the parent of said deceased and all other persons who may be entitled to recover damages on account of the death of said decedent as his heir or heirs or dependent relative or relatives of said decedent.

## II.

Libelant hereby refers to Articles II, III, IV, V, VI, VII, VIII, IX and XIII of the First Cause

of Libel herein and by such reference incorporates said articles as a part of this Third Cause of Libel as if set out here at length.

### III.

Said James B. McGrath at the time of his death was in good health. Said Helen McGrath is 30 years old and would have received pecuniary benefits from the earnings of said James B. McGrath had he lived. In recovering the body of said deceased and in and about the funeral and burial of said body, said Helen McGrath has been caused expense, to-wit, the sum of Four hundred dollars (\$400.00) or thereabouts.

### IV.

By reason of the foregoing said Helen McGrath and the estate of said decedent have been damaged in the sum of Twenty-five Thousand Dollars (\$25,000.00) for which libelant prays reparation with interest.

Wherefore, libelants pray that process in due form of law, according to the course of this Honorable Court in causes of [470] admiralty and maritime jurisdiction, may issue against the said Motor Vessel "Sakito Maru", her engines, tackle, apparel, furniture and equipment and that all persons having an interest therein may be cited to appear and answer upon oath all and singular the matters aforesaid; that citation in personam may issue against the respondents and each of them and that they may be required to appear and answer upon oath all

and singular the matters aforesaid and that this Honorable Court may be pleased to decree the payment by respondents and each of them of the damages aforesaid, together with interest thereon and costs of suit herein; that the said Motor Vessel "Sakito Maru" may be condemned and sold to pay the same, and that libelants may have such other and further relief in the premises as in law and justice they may be entitled to receive.

McCUTCHEN, OLNEY, MAN-  
NON & GREENE,  
By HAROLD A. BLACK,  
FRED KELLY,  
LOUCKS & BAKER,  
By JOHN W. BAKER,  
Proctors for Libelants.

It is hereby stipulated that the foregoing amended libel may be filed.

LILLICK, GEARY, McHOSE &  
ADAMS,  
By JOHN C. McHOSE,  
Proctors for Claimant and  
Respondent Nippon Yusen  
Kabushiki Kaisya, a corpo-  
ration.

It is so ordered:

JEREMIAH NETERER,  
United States District Judge.

[471]

(Duly verified.)

[Endorsed]: Filed Nov. 1, 1940.

[472]

[Title of District Court and Cause.]

ANSWER TO AMENDED LIBEL OF HELEN  
McGRATH, HELEN McGRATH AS AD-  
MINISTRATRIX, AND HELEN McGRATH  
AS SPECIAL ADMINISTRATRIX AND  
INTERROGATORIES.

To the Honorable, the Judges of the United States  
District Court, Southern District of California,  
Central Division:

Nippon Yusen Kabushiki Kaisya, as respondent and claimant of the respondent Motor Vessel "Sakito Maru", her engines, tackle, apparel, furniture and equipment, in answer to the amended libel filed herein by Helen McGrath, Helen McGrath as Administratrix of the Estate of Peter Bernard McGrath, deceased, and Helen McGrath as Special Administratrix of the Estate of James B. McGrath, deceased, admits, denies and alleges as follows:

1) Alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations of [473] Articles I, II, VI and X of the alleged first cause of libel, and therefore and on that ground, denies said allegations.

2) Admits the allegations of Articles III and IV.

3) Answering Article V, admits that at all times mentioned in the libel, the barge "Olympic II" was engaged in the business of furnishing facilities for pleasure fishing to passengers for hire and was anchored at a point on the high seas of the Pacific Ocean about  $3\frac{1}{2}$  nautical miles southeast of the



lighthouse at the end of the west breakwater at the entrance to Los Angeles Harbor. Admit that said point is more than a marine league from the actual shore of the State of California. Except as herein expressly admitted, denies each and every allegation of Article V.

4) Answering Article VII, admits that on or about September 4, 1940, at or about 7:10 o'clock A. M., on said day, a collision occurred between the respondent Motor Vessel "Sakito Maru" and the said barge "Olympic II", as a result of which collision said "Olympic II" was sunk and became a total loss. Alleges claimant-respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations that Peter Barnard McGrath and James B. McGrath were struck, bodily injured and cast into the sea and then and there met their death by drowning and therefore, and on that ground, denies said allegation.

5) Answering Article VIII, claimant-respondent is informed and believes, and upon such information and belief alleges, that the facts and circumstances of said collision are as follows:

The fishing barge "Olympic II", a schooner built sixty-three years ago, was recently converted into a pleasure fishing barge. The "Olympic II" had an iron hull, was approximately two [474] hundred thirty-eight (238) feet in length and thirty-eight (38) feet in width, with a depth of twenty-two (22) feet. Except for a bulkhead near the stem, said fishing barge had no other bulkheads, so that her lower hold was open from the bulkhead aforementioned to the

stern. There were stowed in this open lower hold approximately fifteen hundred (1,500) tons of ballast, consisting of gravel, sand and heavy cement blocks.

At the time of the collision aforementioned, at or about 7:10 o'clock A. M., on or about September 4, 1940, the "Olympic II", unknown to the master and officers of the "Sakito Maru", was anchored at a point about  $3\frac{1}{2}$  nautical miles in a direction  $162^{\circ}$  true from the lighthouse at the end of the west breakwater at the entrance to Los Angeles Harbor, California, without permit or license from any governmental body or agency, directly in the steamer lane for all vessels plying between Los Angeles Harbor and the Panama Canal and other ports between Los Angeles Harbor and the Panama Canal. At the time of the collision there was no person aboard said fishing barge licensed by the United States Bureau of Marine Inspection and Navigation, either in the capacity of master, officer, able bodied seaman, or ordinary seaman. At said time there were aboard the "Olympic II" three employees of respondent, Hermosa Amusement Corporation, three employees in a concession or eating place aboard said fishing barge and eighteen people or passengers who had been transported to said fishing barge from the shore that morning aboard shore boats operated by respondent, Hermosa Amusement Corporation, for the purpose of engaging in pleasure fishing.

The "Sakito Maru", at the time of the collision, was on a voyage from New York to Yokohama via the Panama Canal and Los Angeles Harbor. Until

immediately prior to the collision and [475] since noon, September 3, 1940, the "Sakito Maru" was steering a course of 340° true. For several hours prior to the events in question on September 4, 1940, there had been on the bridge of the "Sakito Maru", in charge of her navigation, the first officer, and, in addition, an apprentice officer and a quartermaster, acting as helmsman. At about 7 o'clock A. M., of said day, S. Sato, master of the "Sakito Maru", came on the bridge and he and the other persons aforementioned remained on the bridge during the events hereinafter related and until and after the collision.

At 7 o'clock A. M., September 4, 1940, the "Sakito Maru" was proceeding on the course aforementioned, to-wit, 340° true, at a speed of about sixteen knots per hour, with her engines at full ahead. At this time the weather was clear with practically full visibility off the starboard and port sides of the vessel and to the stern but some distance ahead of the vessel there appeared to be a haze or mist. At about 7:03 o'clock A. M. the range of visibility ahead decreased to approximately one-half ( $\frac{1}{2}$ ) a mile, and at this time the speed of the vessel was reduced to slow ahead, the sounding of regulation fog signals was commenced on the whistle and an A. B. sailor took the position of lookout at the bow of the vessel. Commencing with the time aforementioned fog signals were sounded by the apprentice officer of the "Sakito Maru" at approximately one minute intervals, each signal consisting of a single blast on the whistle of from about five (5) to six (6) seconds in

duration, and these signals were continually sounded at the intervals and in the manner mentioned, until the time of the collision. During this period the master, chief officer and lookout maintained a careful watchfulness and the helmsman remained at the wheel, as aforementioned.

At about 7:09 o'clock A. M., while the "Sakito Maru" was [476] proceeding with her engines at slow ahead, on a course of 340° true, as aforementioned, and while the master, first officer, an apprentice officer and a helmsman were on the bridge in the performance of their duties, as aforementioned, and a lookout was stationed at the bow of the vessel as aforementioned, the lookout at the bow sighted the "Olympic II" dead ahead of the "Sakito Maru" and lying at nearly right angles to her projected course and immediately notified the officers on the bridge of the presence of the fishing barge. Immediately thereafter the helm of the "Sakito Maru" was put hard to starboard, in an effort to change the course of the "Sakito Maru" so as to clear the stern of said fishing barge, the engines were stopped and put full astern and three blasts were sounded on the whistle.

Because of the distance required to change the heading of a vessel of the size and nature of the "Sakito Maru" the vessel had only commenced to swing or change her heading at the time of the impact. The collision occurred at about 7:10 o'clock A. M., the stem of the "Sakito Maru" striking the port side of the "Olympic II" nearly amidships. The impact checked the forward momentum of the



“Sakito Maru”, and since at that time the engines were turning full astern and the propellers were in reverse motion, the “Sakito Maru” was caused to immediately gain a slight sternway and to separate from the barge. The engines were stopped at about the time of the impact but the time required to stop the propellers in their reverse motion was sufficient to permit the vessel to gain sternway and to cause her to separate from the barge immediately after the impact, as aforementioned.

Upon the “Sakito Maru” being separated from the fishing barge, the master of the “Sakito Maru” considered it would be an unwise and a hazardous undertaking to attempt to move the vessel [477] forward again in an effort to nose the bow into the hole stove in the side of the barge, it being possible and probable that such a maneuver might have resulted in the “Sakito Maru” striking the barge in a different place or that her forward momentum could not be checked before the fishing barge might be pushed or caused to list, thus further endangering the lives and safety of those aboard. Accordingly, after the “Sakito Maru” had separated from the fishing barge and her engines were stopped, the engines were again put astern and the vessel backed a sufficient distance to give safe and proper clearance for dropping anchor. While the vessel was backing for this purpose, preparations were under way for dropping the anchor and for lowering a lifeboat. The engines of the “Sakito Maru”, after this maneuver, were stopped at 7:15, the anchor was let go at 7:17, the engines were ordered slow ahead to check

the sternway at 7:18, and the engines were then stopped again at 7:19. Immediately after the engines were stopped at 7:19 and the vessel came to rest in the water, a lifeboat was lowered at 7:20 A. M.

In the meantime, the "Olympic II" sank and the lifeboat after being launched, was immediately directed to the area where the barge had sunk for the purpose of locating and rescuing any persons who might be found in the water. This search was continued by the lifeboat for two hours, during which time the "Sakito Maru" remained at anchor. Before the lifeboat returned to the "Sakito Maru" a Coast Guard cutter arrived at the scene and joined with other small boats in the vicinity to search for persons who might be found in the water. When this search was unavailing and no further assistance could be rendered by the "Sakito Maru", the vessel hoisted anchor at 11:57 A. M. and proceeded to the outer harbor of Los Angeles Harbor, where the vessel anchored until towed to shipyards for survey and temporary repairs. [478]

At no time prior to the sighting of the "Olympic II" by the lookout on the "Sakito Maru" were any bells, signals or other warnings from said fishing barge heard by anyone aboard the "Sakito Maru", nor were any bells, signals, or other warnings from any other fishing barge or craft anchored in the vicinity of the fishing barge "Olympic II" heard by anyone aboard the "Sakito Maru" except as herein admitted, denies the allegations of Article VIII.

6) Answering Article IX, denies that said col-

lision was due to negligence and gross, or any, fault of those navigating the "Sakito Maru", and denies each and all of the particular allegations of negligence under the heading, "B, as respects the 'Sakito Maru' ", and numbered 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 on pages 6 and 7 of the Amended Libel. Admits that said collision and any subsequent loss of life therefrom was due to the negligence and gross fault of those owning, operating and managing the said barge "Olympic II", and admits the particular allegations of negligence under the heading, "A, as respects the barge 'Olympic II' ", and numbered 1, 2, 3, 4, 5, 6 and 7 on page 6 of the Amended Libel.

7) Admits the allegations of Article XII.

7-a) Denies the allegations of Articles XI and XIII.

8) Alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations of Articles I and III of the alleged second cause of libel, and therefore and on that ground, denies said allegations.

9) Answering Article II of the alleged second cause of libel, refers to and repeats all admissions, denials and allegations of the answers hereinabove to the Articles of the first cause of libel as referred to and incorporated in Article II of the second cause of libel. [479]

10) Denies the allegations of Article IV of the alleged second cause of libel.

11) Admits the allegations of Article V of the alleged second cause of libel.

12) Alleges it is without knowledge or information sufficient to form a belief as to the truth of the allegations of Articles I and III of the alleged third cause of libel, and therefore and on that ground, denies said allegations.

13) Answering Article II of the alleged third cause of libel, refers to and repeats all admissions, denials and allegations of the answers hereinabove to the Articles of the first cause of libel as referred to and incorporated in Article II of the alleged third cause of libel.

14) Denies the allegations of Article IV of the alleged third cause of libel.

Further Answering and as a First Separate and Affirmative Defense Claimant-Respondent Alleges:

15) At all times herein mentioned respondent, Nippon Yusen Kabushiki Kaisya, was a corporation organized and existing under the laws of the Empire of Japan and was the owner and operator of the Japanese Motor Vessel "Sakito Maru".

16) Upon information and belief that Hermosa Amusement Corporation, Ltd. was at all times herein mentioned, and now is, a corporation duly organized and existing under and by virtue of the laws of the State of California and was at all times the owner of the fishing barge "Olympic II", and of her tackle, apparel, furniture, appurtenances and boats.

17) On September 4, 1940, while said "Sakito Maru" was bound on a voyage from New York to Yokohama via Los Angeles, said "Sakito Maru" came into collision with the fishing barge "Olympic



II'', [480] then anchored on the high seas of the Pacific Ocean more than a marine league from the shore of the State of California and approximately 3½ nautical miles distant from and in a direction 162° true from the lighthouse at the end of the west breakwater at the entrance to Los Angeles Harbor, California; that as a result of said collision the "Olympic II" and the "Sakito Maru" were each badly damaged and the "Olympic II" sank shortly following the collision.

18) Refers to Article 5) hereinabove and by such reference incorporates said article as a part of this First Separate and Affirmative Defense as if set out here at length.

19) At the time of said collision and at all times prior thereto, the "Sakito Maru" was proceeding at a moderate rate of speed, having careful regard to the existing circumstances and conditions, was keeping a sharp lookout and in all respects complying with the rules and laws of navigation; that the "Sakito Maru" was at all times navigated with due caution and skill by the master and officers thereof, and that said collision was not caused by any fault, negligence or want of due care on the part of respondent, Nippon Yusen Kabushiki Kaisya, or of said "Sakito Maru", or of her officers or crew, or any of them.

20) Claimant-respondent is informed and believes that the said collision and consequent damage to the "Sakito Maru" and the loss of the "Olympic II" were entirely due to the fault of the "Olympic II" and of those in charge of that vessel, and upon

such information and belief claimant-respondent alleges that said vessel was at fault in the following, among other, particulars:

A. Said fishing barge was entirely open and unprotected by collision bulkheads in her lower hold, from a point twenty (20) feet abaft her stem, for a distance of some two hundred and eighteen [481] (218) feet to her stern.

B. There were stowed in said open and unprotected lower hold throughout the entire length of said fishing barge, fifteen hundred (1500) tons of ballast, consisting, among other things, of rock and gravel and heavy cement blocks.

C. There was carried aboard said fishing barge, only one lifeboat, capable of accommodating only twenty persons, which was so affixed to said fishing barge that it required a boom and a winch to raise and lower said lifeboat into the water, which operation would consume at least five minutes time.

D. The "Olympic II" was grossly undermanned and incompetently manned, there being no person aboard said fishing barge as an officer or a member of the crew thereof, who held any license from the Bureau of Marine Inspection and Navigation or who was experienced in navigation or who possessed an adequate or any knowledge of the rules for the prevention of collisions.

E. Although approximately three months prior to the date of said collision the owner of said fishing barge, Hermosa Amusement Corporation, Ltd., was ordered by the Bureau of Marine Inspection and Navigation to make various structural and other

changes and additions of equipment to correct the unseaworthy and unsafe condition of said fishing barge, said Hermosa Amusement Corporation, Ltd. wholly failed and neglected to make any of said changes and wholly and utterly ignored the requirement of the Bureau of Marine Inspection and Navigation. The aforesaid requirements of the Bureau of Marine Inspection and Navigation with which said Hermosa Amusement Corporation, Ltd. failed to comply included among other things the following:

(a) The structure comprising the keel, stem, sternframe, keelsons, stringers, frames, beams, decks, bulkheads, [482] ceilings, sheathings, planking, plating, fastenings, etc., including also the frames, beams, plating or planking of superstructures, deck houses, etc., and all holds, bilges, peaks and tanks shall be thoroughly inspected and necessary tests shall be made to determine actual conditions and suitable repairs, renewals or replacements effected where found necessary.

(b) A sufficient number of transverse watertight bulkheads shall be fitted so that the vessel will remain afloat with positive stability in the event any one mail compartment is flooded.

(c) The structural strength of the vessel shall be in all respects sufficient.

(d) All spars, rigging and gear shall be placed in a safe condition, or removed if unnecessary.

(e) An inclining test shall be made by a representative of the Bureau.

(f) All gangways, accommodation ladders and

stairways, shall have suitable manropes on each side. All side gangways and ladders shall be of rugged construction. All running gear such as tackles, hooks, shackles, bridles, etc., shall be of suitable dimensions and in good condition.

(g) There shall be one set of side lights suitably screened visible at least two miles.

(h) There shall be an efficient fog bell.

(i) There shall be one mechanical fog horn.

(j) There shall be a basket or other efficient signal for the purpose of indicating the side of the fishing vessel approaching vessels may pass.

(k) There shall be at least ten square feet of deck space available for each person allowed on board. [483]

(l) A log book shall be kept in which a daily record of the number of persons on board during the day shall be entered.

(m) All bilges, holds, compartments, etc., shall be free of all rubbish, waste, oil, etc.

(n) Approved lifeboats with suitable launching arrangements and approved life rafts or buoyant apparatus, shall be carried sufficient to provide accommodations for all persons on board. Fifty percent of such accommodations may be in lifeboats, and fifty percent may be in life rafts or buoyant apparatus.

(o) There shall be floodlights on both sides of the vessel on vessels with persons on board other than crew during the night time.

(p) A sufficient complement of licensed officers and certificated seamen, including lifeboatmen,



shall be carried as may be required to adequately deal with any emergency that may arise, and a licensed deck officer shall be in command of the vessel.

(q) Minimum crew while vessel is at anchor with persons other than crew on board shall be :

1 licensed master

1 licensed engineer

Sufficient certificated lifeboatmen to adequately launch and man all lifesaving equipment, 65% of which shall be able seamen.

F. The persons aboard said fishing barge in the employ of the Hermosa Amusement Corporation, Ltd., who were supposedly the crew thereof, were grossly incompetent, negligent and inattentive to their duties.

G. The "Olympic II" had no proper or sufficient, or any, lookout. [484]

H. The "Olympic II" did not have an adequate or proper fog bell, or other sound signalling device, and did not sound proper and regulation fog signals so as to provide a warning to the approaching "Sakito Maru".

I. The "Olympic II", the persons aboard said fishing barge in the employ of the Hermosa Amusement Corporation, Ltd., and the Hermosa Amusement Corporation, Ltd., were negligent and at fault in other respects as to which the claimant is not now advised, but as to which it begs leave to offer proof of, as and when advised, and to amend this answer accordingly.

Further Answering and as a Second Separate and

Affirmative Defense Claimant-Respondent Alleges:

21) Refers to all of the Articles contained in the First Separate and Affirmative Defense herein, and by such reference incorporates said articles as a part of this Second Separate and Affirmative Defense as if set out here at length.

22) Upon information and belief, if Peter Bernard McGrath and/or James B. McGrath lost their lives in said collision, their deaths occurred upon the high seas more than a marine league from the shore of and outside the territorial jurisdiction of the State of California, and that libelant is not the proper party in interest to file or maintain this action and this Honorable Court is without jurisdiction in the premises.

Wherefore, claimant-respondent prays that the said libel be dismissed, and that claimant-respondent have its costs of suit herein incurred, and such other and further relief as to the [485] Court may seem just and proper.

LILLICK, GEARY, McHOSE &  
ADAMS,

JOHN C. McHOSE,  
JAMES L. ADAMS,

Proctors for Claimant-  
Respondent,

634 South Spring Street,  
Los Angeles, California,  
Trinity 3411. [486]

(Duly verified.) [487]

INTERROGATORIES PROPOUNDED TO  
LIBELANT HELEN McGRATH AND  
REQUIRED TO BE ANSWERED UNDER  
OATH.

1) a. State the date of birth of Peter Bernard McGrath.

b. State the date of birth of James B. McGrath.

c. State the age and date of birth of Helen McGrath.

d. State the age and date of birth of Patricia McGrath.

e. State the age and date of birth of Karen McGrath.

2) a. What was the occupation in which Peter Bernard McGrath was engaged at the time of his death?

b. For how long had he been engaged in such occupation?

c. What salary or compensation did he receive?

d. State in detail the exact work done by Peter Bernard McGrath and the name of his employer and the place in which he worked at the time of his death.

e. What other occupations has decedent been engaged in during the past three years?

f. Itemize the amounts contributed to Helen McGrath by Peter Bernard McGrath per month during the period of three years prior to decedent's death.

3) Give the same information requested in Interrogatory No. 2 with respect to James B. McGrath.

4) What were the pecuniary benefits Helen McGrath expected to receive from James B. McGrath had he lived?

5) What was Peter Bernard McGrath's gross income in 1939?

6) What was Peter Bernard McGrath's gross income in 1938?

7) What was James B. McGrath's gross income in 1939?

8) What was James B. McGrath's gross income in 1938?

9) Itemize the funeral expense incurred in connection with the death of Peter Bernard McGrath. [488]

10) Itemize the funeral expense incurred in connection with the death of James B. McGrath.

Dated: November 9, 1940.

LILLICK, GEARY, McHOSE &  
ADAMS,

JOHN C. McHOSE,  
JAMES L. ADAMS,

Proctors for Claimant-  
Respondent.

[Endorsed]: Filed Nov. 12, 1940. [489]

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[Title of District Court and Cause.]

PETITION TO BRING IN THIRD PARTY  
RESPONDENTS UNDER ADMIRALTY  
RULE 56

To the Honorable, the Judges of the United States  
District Court, for the Southern District of  
California, Central Division:

The petition of Nippon Yusen Kabushiki Kaisya,  
a corporation, owner of the Motor Vessel "Sakito



Maru'' and respondent and claimant herein, against Hermosa Amusement Corporation, Ltd., a corporation, J. M. Anderson, Doe One, Doe Two, Doe Three, Doe Four, Doe Five and Doe Six, in a cause of collision civil and maritime, alleges as [490] follows:

1) At all times hereinafter mentioned petitioner, Nippon Yusen Kabushiki Kaisya, was, and now is, a corporation, incorporated, organized and existing under and by virtue of the laws of the Empire of Japan; at all of said times petitioner was, and now is, the owner and operator of the Motor Vessel "Sakito Maru", her motors, tackle, apparel, furniture, etc., and that said vessel was, and now is, registered under the laws of the Empire of Japan.

2) Upon information and belief that at all times hereinafter mentioned third party respondent, Hermosa Amusement Corporation, Ltd., was, and now is, a corporation duly organized and existing under and by virtue of the laws of California and having a place of business in the County of Los Angeles, Southern District of California. Said third party respondent is named as respondent in the libel herein, but citation has not been issued and said third party respondent has not been served and has not appeared herein.

3) Petitioner is ignorant of the true names or capacities, whether individual, associate, corporate, or otherwise, of the third party respondents, Doe One, Doe Two, Doe Three, Doe Four, Doe Five and Doe Six, and therefore names said third party

respondents, and each of them, by such fictitious names, and prays that their true names and capacities, when ascertained, may be incorporated herein by appropriate amendments.

4) Upon information and belief at all times herein mentioned third party respondents were the owners and operators of the fishing barge "Olympic II", formerly a schooner, built sixty-three (63) years ago, and recently converted into a pleasure fishing barge, which was operating on the high seas off Los Angeles Harbor, California; that on or about September 5, 1940, [491] a libel was filed herein by Helen McGrath, Helen McGrath, as administratrix of the estate of Peter Bernard McGrath, deceased, and Helen McGrath, as special administratrix of the estate of James B. McGrath, deceased, against this petitioner and against the Motor Vessel "Sakito Maru" in a cause of damage, civil and maritime, alleging, among other things, on September 4, 1940, off Los Angeles Harbor, California, the "Sakito Maru" collided with and sank the fishing barge "Olympic II", causing the deaths of Peter Bernard McGrath and James B. McGrath, and that said collision was due to fault of the "Sakito Maru".

5) Petitioner alleges upon information and belief that the facts and circumstances of said collision are as follows:

The fishing barge "Olympic II", a schooner built sixty-three years ago, was recently converted into a pleasure fishing barge. The "Olympic II" had an iron hull, was approximately two hundred thirty-eight (238) feet in length and thirty-eight (38) feet

in width, with a depth of twenty-two (22) feet. Except for a bulkhead near the stem, said fishing barge had no other bulkheads, so that her lower hold was open from the bulkhead aforementioned to the stern. There were stowed in this open lower hold approximately fifteen hundred (1,500) tons of ballast, consisting of gravel, sand and heavy cement blocks.

At the time of the collision aforementioned, at or about 7:10 o'clock A. M., on or about September 4, 1940, the "Olympic II", unknown to the master and officers of the "Sakito Maru", was anchored at a point about  $3\frac{1}{2}$  nautical miles in a direction  $162^{\circ}$  true from the lighthouse at the end of the west breakwater at the entrance to Los Angeles Harbor, California, without permit or license from any governmental body or agency, directly in the steamer lane for all vessels plying between Los Angeles Harbor [492] and the Panama Canal and other ports between Los Angeles Harbor and the Panama Canal. At the time of the collision there was no person aboard said fishing barge licensed by the United States Bureau of Marine Inspection and Navigation, either in the capacity of master, officer, able bodied seaman, or ordinary seaman. At said time there were aboard the "Olympic II" three employees of respondent, Hermosa Amusement Corporation, three employees in a concession or eating place aboard said fishing barge and eighteen people or passengers who had been transported to said fishing barge from the shore that morning aboard shore boats operated by respondent, Hermosa Amusement Corporation, for the purpose of engaging in pleasure fishing.



The "Sakito Maru", at the time of the collision, was on a voyage from New York to Yokohama via the Panama Canal and Los Angeles Harbor. Until immediately prior to the collision and since noon, September 3, 1940, the "Sakito Maru" was steering a course of  $340^{\circ}$  true. For several hours prior to the events in question on September 4, 1940, there had been on the bridge of the "Sakito Maru", in charge of her navigation, the first officer, and, in addition, an apprentice officer and a quartermaster, acting as helmsman. At about 7 o'clock A. M., of said day, S. Sato, master of the "Sakito Maru", came on the bridge and he and the other persons aforementioned remained on the bridge during the events hereinafter related and until and after the collision.

At 7 o'clock A. M., September 4, 1940, the "Sakito Maru" was proceeding on the course aforementioned, to-wit,  $340^{\circ}$  true, at a speed of about sixteen knots per hour, with her engines at full ahead. At this time the weather was clear with practically full visibility off the starboard and port sides of the vessel and to the stern but some distance ahead of the vessel there appeared to [493] be a haze or mist. At about 7:03 o'clock A. M. the range of visibility ahead decreased to approximately one-half ( $\frac{1}{2}$ ) a mile, and at this time the speed of the vessel was reduced to slow ahead, the sounding of regulation fog signals was commenced on the whistle and an A. B. sailor took the position of lookout at the bow of the vessel. Commencing with the time aforementioned fog signals were sounded by the apprentice



officer of the "Sakito Maru" at approximately one minute intervals, each signal consisting of a single blast on the whistle of from about five (5) to six (6) seconds in duration, and these signals were continually sounded at the intervals and in the manner mentioned, until the time of the collision. During this period the master, chief officer and lookout maintained a careful watchfulness and the helmsman remained at the wheel, as aforementioned.

At about 7:09 o'clock A. M., while the "Sakito Maru" was proceeding with her engines at slow ahead, on a course of  $340^{\circ}$  true, as aforementioned, and while the master, first officer, an apprentice officer and a helmsman were on the bridge in the performance of their duties, as aforementioned, and a lookout was stationed at the bow of the vessel as aforementioned, the lookout at the bow sighted the "Olympic II" dead ahead of the "Sakito Maru" and lying at nearly right angles to her projected course and immediately notified the officers on the bridge of the presence of the fishing barge. Immediately thereafter the helm of the "Sakito Maru" was put hard to starboard, in an effort to change the course of the "Sakito Maru" so as to clear the stern of said fishing barge, the engines were stopped and put full astern and three blasts were sounded on the whistle.

Because of the distance required to change the heading of a vessel of the size and nature of the "Sakito Maru", the [494] vessel had only commenced to swing or change her heading at the time of the impact. The collision occurred at about 7:10

o'clock A. M., the stem of the "Sakito Maru" striking the port side of the "Olympic II" nearly amidships. The impact checked the forward momentum of the "Sakito Maru", and since at that time the engines were turning full astern and the propellers were in reverse motion, the "Sakito Maru" was caused to immediately gain a slight sternway and to separate from the barge. The engines were stopped at about the time of the impact but the time required to stop the propellers in their reverse motion was sufficient to permit the vessel to gain sternway and to cause her to separate from the barge immediately after the impact, as aforementioned.

Upon the "Sakito Maru" being separated from the fishing barge, the master of the "Sakito Maru" considered it would be an unwise and a hazardous undertaking to attempt to move the vessel forward again in an effort to nose the bow into the hole stove in the side of the barge, it being possible and probable that such a maneuver might have resulted in the "Sakito Maru" striking the barge in a different place or that her forward momentum could not be checked before the fishing barge might be pushed or caused to list, thus further endangering the lives and safety of those aboard. Accordingly, after the "Sakito Maru" had separated from the fishing barge and her engines were stopped, the engines were again put astern and the vessel backed a sufficient distance to give safe and proper clearance for dropping anchor. While the vessel was backing for this purpose, preparations were under way for dropping the anchor and for lowering a lifeboat.

The engines of the "Sakito Maru", after this maneuver, were stopped at 7:15, the anchor was let go at 7:17, the engines were ordered slow ahead to check the sternway at 7:18, and the engines were then stopped again at 7:19. [495] Immediately after the engines were stopped at 7:19 and the vessel came to rest in the water, a lifeboat was lowered at 7:20 A. M.

In the meantime, the "Olympic II" sank and the lifeboat, after being launched, was immediately directed to the area where the barge had sunk for the purpose of locating and rescuing any persons who might be found in the water. This search was continued by the lifeboat for two hours, during which time the "Sakito Maru" remained at anchor. Before the lifeboat returned to the "Sakito Maru" a Coast Guard cutter arrived at the scene and joined with other small boats in the vicinity to search for persons who might be found in the water. When this search was unavailing and no further assistance could be rendered by the "Sakito Maru", the vessel hoisted anchor at 11:57 A. M. and proceeded to the outer harbor of Los Angeles Harbor, where the vessel anchored until towed to shipyards for survey and temporary repairs.

At no time prior to the sighting of the "Olympic II" by the lookout on the "Sakito Maru" were any bells, signals or other warnings from said fishing barge heard by anyone aboard the "Sakito Maru", nor were any bells, signals or other warnings from any other fishing barge or craft anchored in the vicinity of the fishing barge "Olympic II" heard by anyone aboard the "Sakito Maru".



6) The "Sakito Maru" committed no fault or negligence in the premises and upon information and belief the said collision was solely due to and proximately caused by the carelessness and negligence of the fishing barge "Olympic II" and third party respondents in the following respects:

A. The fishing barge "Olympic II" was negligently, recklessly and unnecessarily anchored at a point about 3½ miles outside the main entrance to Los Angeles-Long Beach Harbor, directly in the steamer lane of vessels approaching Los Angeles-Long Beach Harbor [496] from the south so as to constitute a dangerous menace to navigation, particularly during foggy and misty weather as prevailed at the time of the collision, and so as to endanger the safety not only of the barge itself and all persons aboard, but the safety of all vessels approaching Los Angeles-Long Beach Harbor from the south in such regular steamer lane.

B. Despite the fact that said fishing barge constituted a dangerous menace to navigation for the reasons and in the manner aforementioned and that the third party respondents knew said fishing barge was anchored in said regular steamer lane, the third party respondents utterly failed and neglected to furnish any notice or to cause any notice to be furnished to mariners or masters of vessels of the location of said fishing barge.

C. The "Olympic II" did not have an adequate or proper fog bell, or other sound signalling device, and did not sound proper and regulation fog signals



so as to provide a warning to the approaching "Sakito Maru".

D. The "Olympic II" was grossly undermanned and incompetently manned, there being no person aboard said fishing barge as an officer or a member of the crew thereof, who held any license from the United States Bureau of Marine Inspection and Navigation, or who was experienced in navigation or who possessed an adequate or any knowledge of the rules for the prevention of collisions.

E. The "Olympic II" was in a grossly unseaworthy and unsafe condition in the following particulars, among others:

(a) Said fishing barge was entirely open and unprotected by collision bulkheads in her lower hold, from a point twenty (20) feet abaft her stem, for a distance of some two hundred eighteen (218) feet to her stern.

(b) There were stowed in said open and unprotected [497] lower hold throughout the entire length of said fishing barge, fifteen hundred (1500) tons of ballast, consisting, among other things, of rock and gravel and heavy cement blocks.

(c) There was carried aboard said fishing barge only one lifeboat, capable of accommodating only twenty persons, which was so affixed to said fishing barge that it required a boom and a winch to raise and lower said lifeboat into the water, which operation would consume at least five minutes time.

F. Although approximately three months prior to the date of said collision the third party respondent, Hermosa Amusement Corporation, Ltd., was

ordered by the Bureau of Marine Inspection and Navigation to make various structural and other changes to correct the unseaworthy and unsafe condition of said fishing barge, said third party respondent, Hermosa Amusement Corporation, Ltd., wholly failed and neglected to make any of said changes and wholly and utterly ignored the requirements of the Bureau of Marine Inspection and Navigation. The aforesaid requirements of the Bureau of Marine Inspection and Navigation, with which said third party respondent, Hermosa Amusement Corporation, Ltd., failed to comply, included, among other things, the following:

(a) The structure comprising the keel, stem, sternframe, keelsons, stringers, frames, beams, decks, bulkheads, ceilings, sheathings, planking, plating, fastenings, etc., including also the frames, beams, plating or planking of superstructures, deck houses, etc., and all holds, bilges, peaks and tanks, shall be thoroughly inspected and necessary tests shall be made to determine actual conditions and suitable repairs, renewals or replacements effected where found necessary.

(b) A sufficient number of transverse watertight bulkheads shall be fitted so that the vessel will remain afloat [498] with positive stability in the event any one main compartment is flooded.

(c) The structural strength of the vessel shall be in all respects sufficient.

(d) All spars, rigging and gear be placed in a safe condition, or removed if unnecessary.

(e) An inclining test shall be made by a representative of the Bureau.

(f) All gangways, accommodation ladders and stairways, shall have suitable manropes on each side. All side gangways and ladders shall be of rugged construction. All running gear such as tackles, hooks, shackles, bridles, etc. shall be of suitable dimensions and in good condition.

(g) There shall be one set of side lights suitably screened, visible at least two miles.

(h) There shall be an efficient fog bell.

(i) There shall be one mechanical fog horn.

(j) There shall be a basket or other efficient signal for the purpose of indicating the side of the fishing vessel approaching vessels may pass.

(k) There shall be at least ten square feet of deck space available for each person allowed on board.

(l) A log book shall be kept in which a daily record of the number of persons on board during the day shall be entered.

(m) All bilges, holds, compartments, etc., shall be free of all rubbish, waste, oil, etc.

(n) Approved lifeboats with suitable launching arrangements and approved life rafts or buoyant apparatus, shall be carried sufficient to provide accommodations for all persons on board. Fifty percent of such accommodations may be in lifeboats, [499] and fifty percent may be in life rafts or buoyant apparatus.

(o) There shall be floodlights on both sides of the vessel on vessels with persons on board other than crew during the night time.

(p) A sufficient complement of licensed officers and certificated seamen, including lifeboatmen, shall be carried as may be required to adequately deal with any emergency that may arise, and a licensed deck officer shall be in command of the vessel.

(q) The minimum crew while vessel is at anchor with persons other than crew on board shall be:

1 licensed master

1 licensed engineer

Sufficient certificated lifeboatmen to adequately launch and man all lifesaving equipment, 65% of which shall be able seamen.

G. The persons aboard said fishing barge in the employ of third party respondent, Hermosa Amusement Corporation, Ltd., who were supposedly the crew thereof, were grossly incompetent, negligent and inattentive to their duties.

H. The "Olympic II" had no proper or sufficient, or any, lookout.

I. The "Olympic II", the persons aboard said fishing barge in the employ of the third party respondent, Hermosa Amusement Corporation, Ltd., and the third party respondent, Hermosa Amusement Corporation, Ltd., were negligent and at fault in other respects as to which petitioner is not now advised, but as to which it begs leave to offer proof of, as and when advised, and to amend this petition accordingly.

(7) If petitioner is under any liability by reason of matters alleged in the amended libel, which petitioner hereby denies, [500] then any and all such



liability was caused by the fault and negligence of third party respondents as hereinabove alleged and all such liability should be borne by third party respondents instead of petitioner and third party respondents should be proceeded against directly in this Court by libelant.

(8) Petitioner files herewith the customary stipulation for petitioner's costs as required by the rules and practice of this Court.

(9) Petitioner files its answer herein herewith and has obtained the consent of the Court to the filing of this petition.

(10) All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, petitioner prays that a citation in due form of law may issue against third party respondents herein, citing them, and each of them, to appear and answer all and singular the matters set forth in this petition and in the amended libel herein and that third party respondents may be proceeded against as if originally made parties herein and that if said third party respondents cannot be found in this district their goods and chattels within this district may be attached to the amount sued for in the libel herein, and if the Court should find that libelant is entitled to a decree then that said decree be entered against third party respondents herein and that the amended libel be dismissed as against petitioner with costs and that petitioner have

such other and further relief in the premises as to the Court may seem just.

LILLICK, GEARY, McHOSE &  
ADAMS

JOHN C. McHOSE

JAMES L. ADAMS

Proctors for Petitioner  
634 South Spring Street  
Los Angeles, California  
Trinity 3411 [501]

(Duly verified.)

Good cause appearing therefor,

It Is Ordered that petitioner may file the above petition herein, impleading third party respondents above named under the 56th Admiralty Rule of the Supreme Court.

LEON R. YANKWICH

United States District Judge.

[Endorsed]: Filed Nov. 12, 1940. [502]

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[Title of District Court and Cause.]

ANSWER OF HERMOSA AMUSEMENT CORPORATION, LTD., AND J. M. ANDERSEN, RESPONDENTS AND THIRD PARTY RESPONDENTS TO FIRST AMENDED LIBEL AND THIRD PARTY PETITION.

To the Honorable, the Judges of the United States District Court, for the Southern District of California:

Answering the amended libel of Helen McGrath, et al, these respondents allege: [503]

## I.

These respondents allege that they have no knowledge or information as to the following matters and things alleged in the First Amended Libel, and therefore deny each and all of the same and demand strict proof thereof from the libelants:

First cause of libel: all of the allegations of Articles I, VI, X and XI.

Second cause of libel: all of the allegations of Articles I, III and IV.

Third cause of libel: all of the allegations of Articles I, III and IV.

## II.

These respondents admit that at the times mentioned in the Amended Libel, Hermosa Amusement Corporation, Ltd., was the sole owner and operator of the fishing barge "Olympic II"; that J. M. Andersen was the master thereof; that on September 4, 1940, said barge was anchored at a point in the Pacific Ocean approximately 31½ miles southeast of the west breakwater light, Los Angeles Harbor, bearing 162° true therefrom, and was there engaged in the business of furnishing fishing facilities to patrons for hire; and that on September 4, 1940, at about 7:10 A. M., the "Olympic II" was run down and sunk by the respondent Motor Vessel "Sakito Maru" with the loss of several lives.

## III.

These respondents deny that the barge "Olympic II" was anchored directly or at all in any steamer lane approaching Los Angeles Harbor, and allege that she was anchored on the open sea and on a well known and well established fishing ground; deny,

for lack of information and belief, that either the said Peter Bernard McGrath or James B. McGrath was cast into the waters or drowned; admit that no lifeboat was launched from the "Olympic II", [504] and allege that at the time of the collision two powered vessels were alongside the "Olympic II" or nearly so, each capable of taking on board everyone on the "Olympic II", and that the lowering of a lifeboat from the "Olympic II" would have accomplished no purpose; deny that the collision or the death of or injury to any person, or the loss of any property consequent thereon, was due to any fault or negligence of these respondents or either of them, or of anyone managing or operating the "Olympic II" in any of the respects set forth in Article IX of the first cause of libel or otherwise, and allege that the collision and all loss of life, personal injuries and loss of or damage to property resulting therefrom were due to the faults and negligence of the respondent motor vessel "Sakito Maru" in the several respects set forth in Article IX of the Amended Libel and other respects which these respondents will prove at the trial.

#### IV.

These respondents allege, upon information and belief, that if either the said Peter Bernard McGrath or James B. McGrath met his death as a result of the collision, the death of such person was caused or contributed to by the fault, negligence and lack of due care of such deceased person in respects not now known to these respondents, but as to which these respondents will offer proof when



ascertained and ask leave to amend this answer accordingly.

V.

These respondents allege that on September 4, 1940, the "Olympic II", owned and operated by the respondent, Hermosa Amusement Corporation, Ltd., was anchored at the place aforesaid, and was engaged in the business and adventure of furnishing fishing facilities to patrons; and that the said owner respondent used due diligence to make and maintain the said "Olympic II", [505] her equipment and personnel in all respects seaworthy, sufficient and efficient for the purpose and adventure in which she was engaged. Following the collision the "Olympic II" sank and became and remains, with her equipment, a total loss, and the said adventure terminated at or about 7:15 A. M. on September 4, 1940, at the place of anchorage aforesaid. The value of the strippings of the "Olympic II" and of her freight then pending and of the interest of the said owner respondent therein did not and does not exceed the sum of \$415.85. The amount claimed by each of the libelants herein exceeds the value of the said owner respondent's interest in the said "Olympic II" and her freight then pending, and other suits, claims and demands arising out of the said collision are being asserted against the said owner respondent in sums aggregating more than \$500,000.00. The said collision and all loss and damage consequent thereon were done and occasioned without the consent or privity or knowledge or design of the said owner respondent, and without admitting any liability for any consequences of the

said collision, said owner respondent claims the benefit of limitation of liability as by the Acts of Congress of the United States provided.

## VI.

And for answer to the third party petition of the claimant, Nippon Yusen Kabushiki Kaisya, herein, these respondents refer to their answer to the third party petition of said Nippon Yusen Kabushiki Kaisya filed in cause No. 1138-BH, an allied cause arising out of the said collision, pending in this court, and incorporate said allegations in this answer with like force and effect as if set forth herein at length.

Wherefore, these respondents pray that the First Amended Libel and the Third Party Petition be dismissed as to these res- [506] pondents, with costs to these respondents, and that these respondents have such other and further relief as in law and justice they may be entitled to receive.

ALFRED T. CLUFF,  
HUGH B. ROTCHFORD,  
GEORGE H. MOORE,  
CLUFF & BULLARD,

Proctors for Hermosa Amusement Corporation, Ltd. and  
J. M. Andersen, respondents.

403 West 8th Street,  
Los Angeles, California.  
VAndike 9183. [507]

(Duly verified.)

[Endorsed]: Filed Sept. 15, 1941. [508]

In the District Court of the United States, Southern District of California, Central Division.

In Admiralty—No. 1148-BH

HELEN McGRATH; HELEN McGRATH, as Administratrix of the estate of PETER BERNARD McGRATH, deceased; HELEN McGRATH, as Special Administratrix of the estate of JAMES B. McGRATH, deceased,  
Libelants,

vs.

Japanese Motor Vessel SAKITO MARU, her engines, tackle, apparel, furniture and equipment, NIPPON YUSEN KABUSHIKI KAISYA, a corporation, HERMOSA AMUSEMENT CORPORATION, a corporation, FIRST DOE, SECOND DOE, THIRD DOE, FIRST DOE CORPORATION, a corporation, and SECOND DOE CORPORATION, a corporation,

Respondents,

NIPPON YUSEN KABUSHIKI KAISYA, a corporation,

Claimant.

### FINAL DECREE FOR LIBELANTS [509]

This cause was heard as to the issue of liability, in consolidation with various other libels and claims arising out of a collision on September 4, 1940, of the Motor Vessel Sakito Maru and the fishing vessel Olympic II, on the 16th day of September, 1941, upon the pleadings and proofs, and was tried on the

16, 17, 18, 19, 23 and 24 of September, 1941, and was argued and submitted by the proctors of the respective parties, and the Court, after due deliberation, rendered its opinion in writing on October 31, 1941, finding the said Sakito Maru solely at fault for said collision.

Thereafter this cause having come on regularly to be heard on November 14, 1941, for the presentation of evidence with respect to the amount of damages recoverable, Harold A. Black, Messrs. McCutchen, Olney, Mannon & Greene and Fred F. Kelley, appearing for libelants, James L. Adams and Messrs. Lillick, Geary, McHose & Adams appearing for respondent, claimant and petitioner Nippon Yusen Kabushiki Kaisya and Alfred T. Cluff and Messrs. Cluff & Bullard appearing for respondent Hermosa Amusement Company, and evidence oral and documentary, having been introduced, the Court finds:

1. That libelant Helen McGrath ever since October 11, 1940, was and now is the duly appointed, qualified and acting administratrix of the estate of Peter Bernard McGrath, deceased.

2. That said Peter Bernard McGrath died intestate on or about September 4, 1940, by drowning, as a result of said collision between the said Sakito Maru and the said Olympic II.

3. That said Peter Bernard McGrath left surviving him as his heirs at law, his widow, Helen McGrath, [510] and his minor children, Patricia McGrath and Karen McGrath.



4. That said Peter Bernard McGrath at the time of his death was 32 years old, was in good health and capable of earning and did earn approximately \$3600 per annum and regularly devoted a large part of his earnings to the support of his wife and children.

5. That said Helen McGrath was 30 years old at the time of the death of said decedent and that the said minor children Patricia and Karen were eight years old and three and one-half years old, respectively.

6. That by the death of said Peter Bernard McGrath, his said widow and minor children have been deprived of their means of support and have suffered the loss of the society and comfort of their husband and father.

7. That libelant Helen McGrath is the mother of James B. McGrath, deceased.

8. That Peter Bernard McGrath, the father of said James B. McGrath, is dead; that said James B. McGrath at the time of his death, was a minor of the age of nine and one-half years.

9. That said James B. McGrath met his death by drowning on or about September 4, 1940, as a result of said collision between the said Sakito Maru and said Olympic II.

10. That said James B. McGrath at the time of his death was in good health.

11. That libelant Helen McGrath would have received pecuniary benefits from the earnings of said James B. McGrath had he lived. [511]

12. That libelant Helen McGrath has suf-

ferred damages by reason of the death of said James B. McGrath on account of the loss of the society and comfort of said minor son.

Thereafter on November 18, 1941, libelants and respondent, claimant and petitioner Nippon Yusen Kabushiki Kaisya stipulated in open court that the amount of damages recoverable by libelant Helen McGrath, as administratrix of the estate of Peter Bernard McGrath, deceased, on account of the death of said Peter Bernard McGrath is Seventeen Thousand (17,000) Dollars, and the Court finds that said amount is reasonable. That said parties also stipulated in open court on November 18, 1941, that the amount of damages recoverable by libelant Helen McGrath on account of the death of James B. McGrath, deceased, is Three Thousand (3,000) Dollars and the Court finds that said amount is reasonable, and it having been stipulated between said respondent, claimant and third party petitioner, Nippon Yusen Kabushiki Kaisya and third party respondents, Hermosa Amusement Corporation and J. M. Anderson, without prejudice to any other matter, that the foregoing amounts of \$17,000 and \$3,000 awarded libelants as damages are reasonable;

Now, Therefore, it is Hereby Ordered, Adjudged and Decreed: (1) that libelant Helen McGrath, as administratrix of the estate of Peter Bernard McGrath, deceased, recover by reason of the death of said Peter Bernard McGrath, of and from the Japanese Motor Vessel Sakito Maru, her engines, tackle, apparel, furniture and equipment, from Nippon Yusen Kabushiki Kaisya, a corporation, claimant of said vessel, and respondent herein, and from Fi-

delity and Deposit Company of Maryland, a [512] corporation, said claimant's stipulator for value, the sum of \$17,000, with interest therein until paid, at the rate of 7% per annum, but without costs.

(2) That libelant Helen McGrath recover by reason of the death of James B. McGrath, deceased, of and from the Japanese Motor Vessel Sakito Maru, her engines, tackle, apparel, furniture and equipment, from Nippon Yusen Kabushiki Kaisya, a corporation, claimant of said vessel, and respondent herein, and from Fidelity and Deposit Company of Maryland, a corporation, said claimant's stipulator for value the sum of \$3,000, with interest thereon until paid, at the rate of 7% per annum, but without costs.

(3) That the libel be dismissed as against respondent Hermosa Amusement Corporation, a corporation, and J. M. Anderson, and that the third party petition of Nippon Yusen Kabushiki Kaisya against Hermosa Amusement Corporation, et al., be likewise dismissed and that said Hermosa Amusement Corporation and said J. M. Anderson recover from libelants and from petitioner Nippon Yusen Kabushiki Kaisya, a corporation, and from their and each of their stipulators for costs, its costs as taxed herein, at \$62.52.

(4) That the opinion of this Court heretofore filed herein on October 31, 1941, as supplemented by the findings and conclusions set forth in this decree, be and hereby are adopted as the Court's findings of fact and conclusions of law pursuant to Supreme Court Rule 46½.

(5) That unless this decree be satisfied within

ten days after the entry thereof and notice to claimant, respondent and petitioner, Nippon Yusen Kabushiki Kaisya, or its proctors, James L. Adams and Messrs. Lillick, Geary, McHose & Adams, the stipulators for costs and for value on the part of [513] said respondent, claimant and petitioner, Nippon Yusen Kabushiki Kaisya, cause the engagement of their stipulations to be performed within such time, or show cause within four days after the expiration of said ten days why execution should not issue against their goods, chattels and lands to enforce satisfaction of this decree.

BEN HARRISON,

United States District Judge.

Dated: December 19, 1941.

Approved as to form as provided in Rule 126 and old Rule 44.

ALFRED T. CLUFF,

CLUFF & BULLARD,

Proctors for Respondent

Hermosa Amusement Corporation and J. M. Anderson.

[Endorsed]: Filed and entered Dec. 19, 1941.

[Endorsed]: Judgment satisfied 3/5, 1942 by filing satisfaction of Judgment.

R. S. ZIMMERMAN,

Clerk U. S. District Court,

Southern District of California.

By C. A. SIMMONS,

Deputy. [514]



In the District Court of the United States, Southern  
District of California, Central Division.

In Admiralty—No. 1148-Y.

HELEN McGRATH; HELEN McGRATH, as Ad-  
ministratrix of the estate of PETER BER-  
NARD McGRATH, deceased; HELEN Mc-  
GRATH, as Special Administratrix of the es-  
tate of JAMES B. McGRATH, deceased,  
Libelants,

vs.

JAPANESE MOTOR VESSEL “SAKITO  
MARU”, her engines, tackle, apparel, furniture  
and equipment, NIPPON YUSEN KABU-  
SHIKI KAISYA, a corporation, HERMOSA  
AMUSEMENT CORPORATION, a corpora-  
tion, FIRST DOE, SECOND DOE, THIRD  
DOE, FIRST DOE CORPORATION, a cor-  
poration, and SECOND DOE CORPORA-  
TION, a corporation,

Respondents,

NIPPON YUSEN KABUSHIKI KAISYA, a  
corporation,

Claimant.

## SATISFACTION OF JUDGMENT AND FINAL DECREE

Know All Men by These Presents:

Full satisfaction of the final decree entered herein  
December 19, 1941, in Minute Book 24, at page 346,

is hereby acknowledged. Said decree is in favor of libelant, Helen McGrath, as Administratrix of the estate of Peter Bernard McGrath, deceased, [515] against Respondent Japanese motor vessel, Sakito Maru, her engines, tackle, apparel, furniture and equipment, Nippon Yusen Kabushiki Kaisya, a corporation, claimant of said vessel, and Fidelity and Deposit Company of Maryland, a corporation, claimant's stipulator for value, in the amount of \$17,000, with interest therein until paid at the rate of 7% per annum, but without costs. Said decree is also in favor of libelant, Helen McGrath against said respondent Sakito Maru, said claimant, Nippon Yusen Kabushiki Kaisya, and said stipulator, Fidelity & Deposit Company of Maryland, in the amount of \$3,000, with interest thereon until paid at the rate of 7% per annum, also without costs. The Clerk of the above entitled court is hereby authorized and directed to enter of record in said action the satisfaction of said final decree, the same having been fully paid, satisfied and discharged.

Dated: Los Angeles, California, March 5, 1942.

JOHN W. BAKER,  
FREDERICK F. KELLEY,  
McCUTCHEN, OLNEY, MAN-  
NON & GREENE,  
HAROLD A. BLACK,  
Proctors for Libelants. [516]

(Duly verified.)

[Endorsed]: Filed Mar. 5, 1942. [517]

[Title of District Court and Cause.]

MOTION OF RECEIVER IN BANKRUPTCY  
TO INTERVENE [678]

Comes now Sterling Carr, receiver in bankruptcy of Nippon Yusen Kabushiki Kaisya, a corporation and alleged bankrupt, and hereby moves the above entitled court for leave to enter his appearance and intervene in behalf of said alleged bankrupt and its estate in the above entitled cause through his undersigned special counsel.

This motion is made upon the grounds that such action is necessary for the proper protection of the interests of said alleged bankrupt and its estate.

This motion is based upon orders entered by the United States District Court for the Northern District of California in that certain proceedings in bankruptcy numbered 34889-W, authenticated copies of which will be produced upon the presentation of this motion, and upon the pleadings and record of the clerk of the above entitled court in the above entitled cause.

Dated: May 2, 1942.

LILLICK, GEARY, McHOSE  
& ADAMS

IRA S. LILLICK

Special Counsel for Said Receiver in Bankruptcy

[Endorsed]: Filed May 4, 1942. [679]

[Title of District Court and Cause.]

ORDER GRANTING LEAVE TO INTERVENE  
BY RECEIVER IN BANKRUPTCY [680]

Upon considering the motion of Sterling Carr, receiver in bankruptcy of Nippon Yusen Kabushiki Kaisya, a corporation and alleged bankrupt, and good cause appearing therefor,

It Is Hereby Ordered that said Sterling Carr, receiver in bankruptcy of said Nippon Yusen Kabushiki Kaisya, an alleged bankrupt, may enter his appearance and intervene in behalf of said alleged bankrupt and its estate in the above entitled cause.

Dated: May 4, 1942.

BEN HARRISON

U. S. District Judge

[Endorsed]: Filed May 4, 1942. [681]

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[Title of District Court and Cause.]

PETITION FOR APPEAL [682]

To the Honorable Ben Harrison, Judge of the United States District Court, Southern District of California, Central Division:

Your petitioners, Nippon Yusen Kabushiki Kaisya, a corporation, respondent, claimant, cross-libelant and the petitioner under the 56th Admiralty Rule in the above entitled cause, Fidelity and Deposit Company of Maryland, a corporation, stipulator for value and costs herein, and Sterling Carr, receiver in bankruptcy of said Nippon Yusen Kabushiki Kaisya, pray that they may be permitted to take an appeal



from the final decree entered in the above cause on March 17, 1942, to the United States Circuit Court of Appeals for the Ninth Circuit for the reasons specified in the assignment of errors which is filed herewith.

Your petitioners, and each of them, desire that said appeal shall operate as a supersedeas and therefore pray that an order be entered adopting and approving the stipulation and bond for release heretofore filed herein as a supersedeas bond and as good and sufficient security in such respect.

Your petitioners, and each of them also request that the stipulation for costs heretofore filed in the above cause, including that filed in conjunction with said petition under the 56th Admiralty Rule and the bond for costs on appeal filed herewith be adopted and approved as good and sufficient security.

Dated: Los Angeles, California, May 5, 1942.

LILLICK, GEARY, McHOSE  
& ADAMS

IRA S. LILLICK

JAMES L. ADAMS

Proctors for Petitioners

[Endorsed]: Filed May 5, 1942. [683]

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[Title of District Court and Cause.]

### ASSIGNMENT OF ERRORS [684]

Now come Nippon Yusen Kabushiki Kaisya, a corporation, appellant and respondent, claimant, cross-libelant and petitioner under the 56th Admiralty Rule in the above entitled cause, Fidelity and

Deposit Company of Maryland, appellant and stipulator for value and costs in said cause, and Sterling Carr, receiver in bankruptcy of said Nippon Yusen Kabushiki Kaisya, and hereby assign the following errors in the above entitled proceedings:

### I.

The District Court erred in denying the motion of Nippon Yusen Kabushiki Kaisya for an order staying and holding in abeyance all proceedings on the libel and amended libel of Hermosa Amusement Corporation, Ltd., in the above cause until security was furnished Nippon Yusen Kabushiki Kaisya to respond in damages to its claim as set forth in its cross-libel filed in said cause pursuant to the provisions of Rule 50 of the rules enacted by the United States Supreme Court for practice in the Courts of Admiralty of the United States.

### II.

The District Court erred in denying the motion of Nippon Yusen Kabushiki Kaisya for the continuance of the trial of the above entitled and consolidated causes from September 16, 1941, until such time as testimony of certain material and necessary witnesses could be obtained by deposition.

### III.

The District Court erred in finding that the Japanese Motor Vessel "Sakito Maru" was solely at fault for the collision with the pleasure fishing barge "Olympic II" on September 4, 1940.

### IV.

The District Court erred in not finding that the

“Olympic II” was at fault for said collision. [685]

V.

The District Court Erred in not rendering judgment in favor of Nippon Yusen Kabushiki Kaisya and against Hermosa Amusement Corporation, Ltd. on the libel and cross-libel in the above entitled cause and on the petition under the 56th Admiralty Rule in the above entitled and consolidated causes.

VI.

The District Court erred in not finding that the “Olympic II” was at fault for anchoring and remaining in the position and location in which she was at the time of the collision under the conditions then existing.

VII.

The District Court erred in not finding that the “Olympic II”, at the time of and prior to the collision, was anchored and maintained in a dangerous position so as to constitute a menace to navigation and that such fault was a cause of the collision.

VIII.

The District Court erred in finding that at the time of the collision the “Olympic II” was not anchored in the vicinity of any channel or fairway and in not finding that at such time she was anchored in a navigable channel within the meaning of Section 409 of Title 33 of the United States Code.

IX.

The District Court erred in finding that the Secretary of War had sufficient authority to prohibit the anchoring of the “Olympic II” at her place of

anchorage and that there was a presumption that her place of anchorage was safe and proper because the Secretary of War had not prohibited the same.

#### X.

The District Court erred in not finding the lookout on the [686] "Olympic II" was grossly inattentive and incompetent, failed to sound proper fog signals and neglected to take other precautionary steps required in the practice of good seamanship and by the attendant circumstances and that these faults contributed to the collision.

#### XI.

The District Court erred in finding that the deficiency and faults of the lookout aboard the "Olympic II" did not contribute to the collision.

#### XII.

The District Court erred in not finding that the "Olympic II" failed to sound proper fog signals.

#### XIII.

The District Court erred in not finding that the "Olympic II" was incompetently and inadequately manned and that this fault contributed to the resultant loss of life, personal injuries and property damage.

#### XIV.

The District Court erred in not finding that the "Olympic II" was unseaworthy and that this condition was a fault contributing to her sinking and to the resultant loss of life, personal injuries and property damage.



## XV.

The District Court erred in finding that the minimum requirements specified for the "Olympic II" by the U. S. Local Inspectors of the Bureau of Marine Inspection and Navigation were not enforced and that the owners of the "Olympic II" were not obliged to comply with such minimum requirements prior to the time of the collision. [687]

## XVI.

The District Court erred in finding that said minimum requirements imposed by the U. S. Local Inspectors of the Bureau of Marine Inspection and Navigation were a nullity and that they were without power or authority to impose the same.

## XVII.

The District Court erred in finding that the "Olympic II" was not a seagoing barge within the meaning or contemplation of Section 395 of Title 46 of the United States Code.

## XVIII.

The District Court erred in finding that the Japanese Motor Vessel "Sakito Maru" was proceeding at an immoderate speed at the time of and prior to the collision.

## XIX.

The District Court erred in finding that if visibility was limited to 300 meters the "Sakito Maru" still was proceeding at an immoderate speed.

## XX.

The District Court erred in finding that at 7:09 o'clock A. M. the "Sakito Maru" was proceeding at

not less than 8 miles per hour and in not finding that at this time the "Sakito Maru" was proceeding at not more than  $6\frac{1}{2}$  knots per hour.

#### XXI.

The District Court erred in finding that at 7:03 o'clock A. M. the "Sakito Maru" was 9,120 feet distant from the "Olympic".

#### XXII

The District Court erred in finding that at the time of the collision the fog, from the standpoint of those aboard the "Sakito Maru", was not very thick and that the bright sun was breaking through and dissipating the fog. [688]

#### XXIII.

The District Court erred in finding that the lookout aboard the Japanese Motor Vessel "Sakito Maru" was inefficient or at fault in any respect.

#### XXIV.

The District Court erred in finding that the "Olympic II" was clearly visible to a person standing at the bow of the "Sakito Maru" for at least 1800 feet.

#### XXV.

The District Court erred in finding that even if the "Olympic II" and her owners might be at fault the "Sakito Maru", by the exercise of reasonable care and prudence, could have avoided the collision and is therefore chargeable with sole fault for the collision and the resultant loss of life, personal injuries and property damage.

## XXVI.

The District Court erred in not finding that the master and officers of the "Sakito Maru" did not know and were not charged with notice that the "Olympic II" was anchored in the position and location that she was prior to sighting her immediately before the collision.

## XXVII.

The District Court erred in finding that Captain Sato in loyalty to his own ship and crew placed too much credence in the testimony of his own lookout and thereby unconsciously submerged his own opinion and permitted the testimony of the lookout to become his own present conclusion.

## XXVIII.

The District Court erred in denying the exception of Nippon Yusen Kabushiki Kaisya to and in affirming the report of the [689] Commissioner fixing the fair market value of the "Olympic II", less special fishing equipment, on September 4, 1940, at \$26,500 and the value of special equipment at \$3,000 and in not finding that the fair market value of the "Olympic II" and of such special equipment at such time were no greater than \$18,500 and \$2,000 respectively.

LILLICK, GEARY, McHOSE &  
ADAMS

IRA S. LILLICK

JAMES L. ADAMS

Proctors for Appellants and  
Petitioners.

[Title of District Court and Cause.]

### ORDER ALLOWING APPEAL

Upon reading the petition of Nippon Yusen Kabushiki Kaisya, a corporation, and Fidelity and Deposit Company of Maryland, a [691] corporation, and Sterling Carr, receiver in bankruptcy of said Nippon Yusen Kabushiki Kaisya, for an appeal from the Final Decree entered in the above entitled cause on March 17, 1942, and on consideration of the Assignment of Errors filed herewith,

It Is Ordered that the appeal herein be allowed as prayed for, and

It Is Further Ordered that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings herein be forthwith transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, and

It Is Further Ordered that the stipulation and bond for release heretofore filed herein be and the same hereby is adopted and approved as a supersedeas bond and as good and sufficient security in such respect and that the stipulations for costs heretofore filed herein, including that filed in conjunction with the petition under the 56th Admiralty Rule and the bond for costs on appeal filed herewith, be and the same hereby are adopted and approved as good and sufficient security.

Dated: Los Angeles, California, May 5, 1942.

BEN HARRISON

United States District Judge

[Endorsed]: Filed May 5, 1942. [692]



[Title of District Court and Cause.]

## BOND FOR COSTS ON APPEAL

Know All Men by These Presents:

Whereas, Nippon Yusen Kabushiki Kaisya, a corporation, [693] respondent, claimant, cross-libelant and the petitioner under the 56th Admiralty Rule in the above entitled cause, Fidelity and Deposit Company of Maryland, a corporation, stipulator for value and costs herein, and Sterling Carr, receiver in bankruptcy of said Nippon Yusen Kabushiki Kaisya, have appealed or are about to appeal from that certain Final Decree heretofore made and entered in the above entitled cause on March 17, 1942, and

Whereas, the American Bonding Company of Baltimore, a corporation qualified to act as surety in this court, is held and firmly bound unto Hermosa Amusement Corporation, Ltd., a corporation, libelant, cross-respondent, third party respondent and appellee herein, and J. M. Anderson, third party respondent and appellee, and to whom it may concern, in the sum of Two Hundred Fifty Dollars (\$250.00), for the payment of which well and truly to be made it does hereby bind itself, its successors and assigns, firmly by these presents, hereby consenting and agreeing that in case of default or contumacy on the part of said appellants, or each of them, or said surety, execution to the amount of Two Hundred Fifty Dollars (\$250.00) may issue against its *good*, chattels and land;

Now, Therefore, the condition of this obligation is such that if the above named appellants, and each of them, shall prosecute their said appeal with effect and pay all costs which may be awarded against them, or either of them, as such appellants if the appeal is dismissed or the judgment affirmed, or of such costs as the appellate court may award if the judgment is modified, then this obligation shall be void, otherwise the same shall be and remain in full force and effect.

Dated: Los Angeles, California, May 4, 1942.

AMERICAN BONDING COM-  
PANY OF BALTIMORE, a  
corporation,

[Seal] By ROBERT HECHT  
Attorney in Fact.

Attest:

S. M. SMITH  
Agent. [694]

Examined and recommended for approval:

LILLYCK, GEARY, McHOSE &  
ADAMS,  
JAMES L. ADAMS.

I hereby approve the foregoing bond.

Dated: May 5, 1942.

BEN HARRISON,  
United States District Judge.

(Duly verified.)

[Endorsed]: Filed May 5, 1942. [695]

[Title of District Court and Cause.]

**MOTION OF RECEIVER IN BANKRUPTCY  
TO INTERVENE.**

Comes now Sterling Carr, receiver in bankruptcy of Nippon Yusen Kabushiki Kaisya, a corporation and alleged bankrupt, and hereby moves the above entitled court for leave to enter his appearance and intervene in behalf of said alleged bankrupt and its estate in the above entitled cause through his undersigned special counsel. [710]

This motion is made upon the grounds that such action is necessary for the proper protection of the interests of said alleged bankrupt and its estate.

This motion is based upon orders entered by the United States District Court for the Northern District of California in that certain proceeding in bankruptcy numbered 34889-W, authenticated copies of which will be produced upon the presentation of this motion, and upon the pleadings and records of the clerk of the above entitled court in the above entitled cause.

Dated: May 2, 1942.

LILLICK, GEARY, McHOSE  
& ADAMS,

By IRA S. LILLICK,

Special Counsel for Said Receiver in Bankruptcy.

It is Hereby Stipulated and Agreed, by and between Hermosa Amusement Corporation, Ltd., a corporation, and J. M. Anderson and Sterling Carr,

receiver in bankruptcy of Nippon Yusen Kabushiki Kaisya, alleged bankrupt, through their respective undersigned counsel, that the foregoing motion may be heard and presented to the above entitled court at 9 A. M. o'clock on the 4th day of May, 1942, without further notice.

Dated: May 2, 1942.

ALFRED T. CLUFF,  
CLUFF & BULLARD,

Attorneys for Hermosa Amusement Corporation, Ltd., and  
J. M. Anderson.

LILLICK, GEARY, McHOSE &  
ADAMS,

IRA S. LILLICK,  
Special Counsel for Sterling  
Carr, Said Receiver in  
Bankruptcy.

[Endorsed]: Filed May 4, 1942. [711]

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District Court of the United States  
Southern District of California  
Central Division

At a Stated Term, to wit: The February Term, A.D. 1942, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday, the 4th day of May, in the year of our Lord one thousand nine hundred and forty-two.



Present: The Honorable Ben Harrison, District Judge.

Nos. 1138, 1138, 1138, 1138, 1138, 1146, 1147, 1148, 1149, 1154, 1155, 1296—BH Adm.

[The Following Order Is Made in Each of the Above-Entitled Causes:]

This cause coming on for hearing motion of Sterling Carr, Receiver in Bankruptcy of Nippon Yusen Kabushiki Kaisya, a corporation, an alleged bankrupt, for leave to enter his appearance and intervene in behalf of said alleged bankrupt and its estate, filed May 4, 1942; Alfred T. Cluff, Esq., appearing as counsel for Hermosa Amusement Corp., Ltd. and J. M. Anderson; James L. Adams, Esq., appearing as counsel for Nippon Yusen Kabushiki Kaisya, a corp.; and Sterling Carr, Receiver in Bankruptcy of Nippon Yusen Kabushiki Kaisya, a corporation, Alleged Bankrupt, being present:

Said motion is presented and ordered filed, and the Court orders the said motion denied on the ground that the Court lacks jurisdiction. [712]

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[Title of District Court and Cause.]

#### PETITION FOR APPEAL

To the Honorable Ben Harrison, Judge of the United States District Court, Southern District of California, Central Division:

Your petitioners, Nippon Yusen Kabushiki Kaisya, a corporation, respondent, claimant and the petitioner under the [717] 56th Admiralty Rule in the above entitled cause, Fidelity and Deposit Com-

pany of Maryland, a corporation and stipulator for value and costs herein, and Sterling Carr, receiver in bankruptcy of said Nippon Yusen Kabushiki Kaisya, pray that they may be permitted to take an appeal from the final decree entered in the above cause on March 19, 1942, to the United States Circuit Court of Appeals for the Ninth Circuit for the reasons specified in the Assignment of Errors which is filed herewith, and that by such appeal they, and each of them, may have reviewed the questions whether the pleasure fishing barge "Olympic II" was not at fault for the collision between said vessel and the Japanese Motor Vessel "Sakito Maru" on September 4, 1940, whether the said Japanese Motor Vessel "Sakito Maru" was not free from fault for said collision, and whether the petition of your petitioner, Nippon Yusen Kabushiki Kaisya, under the 56th Admiralty Rule against Hermosa Amusement Corporation, Ltd., and J. M. Anderson herein should have been dismissed.

Your petitioners, and each of them, desire that the stipulation for costs heretofore filed in conjunction with said petition under the 56th Admiralty Rule and the bond for costs on appeal filed herewith be approved and sufficient security in such respect.

Dated: Los Angeles, California, May 5, 1942.

LILLICK, GEARY, McHOSE &  
ADAMS,

IRA S. LILLICK,

JAMES L. ADAMS,

Proctors for Petitioners.

[Endorsed]: Filed May 5, 1942. [718]

[Title of District Court and Cause.]

## ASSIGNMENT OF ERRORS

Now come Nippon Yusen Kabushiki Kaisya, a corporation, appellant and respondent, claimant, cross-libelant and petitioner under the 56th Admiralty Rule in the above entitled cause, Fidelity and Deposit Company of Maryland, appellant and stipulator for value and costs in said cause, and Sterling Carr, receiver in bankruptcy [719] of said Nippon Yusen Kabushiki Kaisya, and hereby assign the following errors in the above entitled proceedings:

### I.

The District Court erred in denying the motion of Nippon Yusen Kabushiki Kaisya for the continuance of the trial of the above entitled and consolidated causes from September 16, 1941, until such time as testimony of certain material and necessary witnesses could be obtained by deposition.

### II.

The District Court erred in finding that the Japanese Motor Vessel "Sakito Maru" was solely at fault for the collision with the pleasure fishing barge "Olympic II" on September 4, 1940.

### III.

The District Court erred in not finding that the "Olympic II" was at fault for said collision.

### IV.

The District Court erred in not rendering judg-

ment in favor of Nippon Yusen Kabushiki Kaisya and against Hermosa Amusement Corporation, Ltd. on the libel and cross-libel in the above entitled cause and on the petition under the 56th Admiralty Rule in the above entitled and consolidated causes.

#### V.

The District Court erred in not finding that the "Olympic II" was at fault for anchoring and remaining in the position and location in which she was at the time of the collision under the conditions then existing.

#### VI.

The District Court erred in not finding that the "Olympic II", at the time of and prior to the collision, was anchored and maintained in a dangerous position so as to constitute a menace to [720] navigation and that such fault was a cause of the collision.

#### VII.

The District Court erred in finding that at the time of the collision the "Olympic II" was not anchored in the vicinity of any channel or fairway and in not finding that at such time she was anchored in a navigable channel within the meaning of Section 409 of Title 33 of the United States Code.

#### VIII.

The District Court erred in finding that the Secretary of War had sufficient authority to prohibit the anchoring of the "Olympic II" at her place of anchorage and that there was a presumption that her



place of anchorage was safe and proper because the Secretary of War had not prohibited the same.

### IX.

The District Court erred in not finding the lookout on the "Olympic II" was grossly inattentive and incompetent, failed to sound proper fog signals and neglected to take other precautionary steps required in the practice of good seamanship and by the attendant circumstances and that these faults contributed to the collision.

### X.

The District Court erred in finding that the deficiency and faults of the lookout aboard the "Olympic II" did not contribute to the collision.

### XI.

The District Court erred in not finding that the "Olympic II" failed to sound proper fog signals.

### XII.

The District Court erred in not finding that the "Olympic II" was incompetently and inadequately manned and that this fault [721] contributed to the resultant loss of life, personal injuries and property damage.

### XIII.

The District Court erred in not finding that the "Olympic II" was unseaworthy and that this condition was a fault contributing to her sinking and to the resultant loss of life, personal injuries and property damage.

## XIV.

The District Court erred in finding that the minimum requirements specified for the "Olympic II" by the U. S. Local Inspectors of the Bureau of Marine Inspection and Navigation were not enforced and that the owners of the "Olympic II" were not obliged to comply with such minimum requirements prior to the time of the collision.

## XV.

The District Court erred in finding that said minimum requirements imposed by the U. S. Local Inspectors of the Bureau of Marine Inspection and Navigation were a nullity and that they were without power or authority to impose the same.

## XVI.

The District Court erred in finding that the "Olympic II" was not a seagoing barge within the meaning or contemplation of Section 395 of Title 46 of the United States Code.

## XVII.

The District Court erred in finding that the Japanese Motor Vessel "Sakito Maru" was proceeding at an immoderate speed at the time of and prior to the collision.

## XVIII.

The District Court erred in finding that if visibility was limited to 300 meters the "Sakito Maru" still was proceeding at an immoderate speed. [722]

## XIX.

The District Court erred in finding that at 7:09 o'clock A. M. the "Sakito Maru" was proceeding at not less than 8 miles per hour and in not finding that at this time the "Sakito Maru" was proceeding at not more than 6½ knots per hour.

## XX.

The District Court erred in finding that at 7:03 o'clock A. M. the "Sakito Maru" was 9,120 feet distant from the "Olympic II".

## XXI.

The District Court erred in finding that at the time of the collision the fog, from the standpoint of those aboard the "Sakito Maru", was not very thick and that the bright sun was breaking through and dissipating the fog.

## XXII.

The District Court erred in finding that the look-out aboard the Japanese Motor Vessel "Sakito Maru" was inefficient or at fault in any respect.

## XXIII.

The District Court erred in finding that the "Olympic II" was clearly visible to a person standing at the bow of the "Sakito Maru" for at least 1800 feet.

## XXIV.

The District Court erred in finding that even if the "Olympic II" and her owners might be at fault the "Sakito Maru", by the exercise of reasonable

care and prudence, could have avoided the collision and is therefore chargeable with sole fault for the collision and the resultant loss of life, personal injuries and property damage.

### XXV.

The District Court erred in not finding that the master and [723] officers of the "Sakito Maru" did not know and were not charged with notice that the "Olympic II" was anchored in the position and location that she was prior to sighting her immediately before the collision.

### XXVI.

The District Court erred in finding that Captain Sato in loyalty to his own ship and crew placed too much credence in the testimony of his own lookout and thereby unconsciously submerged his own opinion and permitted the testimony of the lookout to become his own present conclusion.

LILLICK, GEARY, McHOSE &  
ADAMS,

IRA S. LILLICK,

JAMES L. ADAMS,

Proctors for Appellants and  
Petitioners.

[Endorsed]: Filed May 5, 1942. [724]



[Title of District Court and Cause.]

ORDER ALLOWING APPEAL

Upon reading the petition of Nippon Yusen Kabushiki Kaisya, a corporation, Fidelity and Deposit Company of Maryland, a corporation, Sterling Carr, receiver in bankruptcy of said Nippon Yusen Kabushiki Kaisya, for an appeal from the Final Decree entered [725] in the above entitled cause on March 19, 1942, and on consideration of the Assignment of Errors filed herewith,

It Is Ordered that the appeal herein be allowed as prayed for, and

It Is Further Ordered that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings herein be forthwith transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, and

It Is Further Ordered that the stipulation for costs heretofore filed in conjunction with the petition of Nippon Yusen Kabushiki Kaisya, a corporation, under the 56th Admiralty Rule and the bond for costs on appeal filed herein on this day be and the same are hereby adopted and approved as good and sufficient security in such respect.

Dated: Los Angeles, California, May 5, 1942.

BEN HARRISON,

United States District Judge.

[Endorsed]: Filed May 5, 1942. [726]

[Title of District Court and Cause.]

### BOND FOR COSTS ON APPEAL

Know All Men By These Presents:

Whereas, Nippon Yusen Kabushiki Kaisya, a corporation, respondent, claimant and petitioner under the 56th Admiralty Rule [727] in the above entitled cause, Fidelity and Deposit Company of Maryland, a corporation, stipulator for value and costs herein, and Sterling Carr, receiver in bankruptcy of said Nippon Yusen Kabushiki Kaisya, have appealed or are about to appeal from that certain Final Decree heretofore made and entered in the above entitled cause on March 19, 1942, and

Whereas, the American Bonding Company of Baltimore, a corporation qualified to act as surety in this court, is held and firmly bound unto Hermosa Amusement Corporation, a corporation, and J. M. Anderson, third party respondents and appellees herein, and to whom it may concern, in the sum of Two Hundred Fifty Dollars (\$250.00), for the payment of which well and truly to be made it does hereby bind itself, its successors and assigns, firmly by these presents, hereby consenting and agreeing that in case of default or contumacy on the part of said appellants, or each of them, or said surety, execution to the amount of Two Hundred Fifty Dollars (\$250.00) may issue against its goods, chattels and land;

Now, therefore, the condition of this obligation is

such that if the above named appellants, and each of them, shall prosecute their said appeal with effect and pay all costs which may be awarded against them, or either of them, as such appellants if the appeal is dismissed or the judgment affirmed, or of such costs as the appellate court may award if the judgment is modified, then this obligation shall be void, otherwise the same shall be and remain in full force and effect.

Dated: Los Angeles, California, May 4, 1942.

(Seal) AMERICAN BONDING COM-  
PANY OF BALTIMORE, a  
corporation.

By ROBERT HECHT,  
Attorney in Fact.

Attest:

S. M. SMITH, Agent. [728]

Examined and recommended for approval:

LILLICK, GEARY, McHOSE &  
ADAMS,  
JAMES L. ADAMS

I hereby approve the foregoing bond.

Dated: May 5, 1942.

BEN HARRISON,  
United States District Judge.

(Duly verified.)

[Endorsed]: Filed May 5, 1942. [729]

[Title of District Court and Cause.]

STIPULATION WAIVING DAMAGE QUESTIONS, ETC. ON APPEAL AND WITHDRAWING ASSIGNMENTS WITH REFERENCE THERETO. [915]

It is hereby stipulated and agreed, by and between Hermosa Amusement Corporation, Ltd., a corporation, libelant and appellee in the above entitled cause, and Nippon Yusen Kabushiki Kaisya, a corporation, respondent, claimant and appellant in the above entitled cause, and Sterling Carr, receiver in bankruptcy of Nippon Yusen Kabushiki Kaisya, a bankrupt, a party appellant in the above entitled cause, as follows:

1. That Assignment No. 1 contained in the Assignment of Errors on file herein be and the same is hereby withdrawn and that said appellants waive any right to question on the appeal in said cause the propriety of the ruling of the United States District Court in overruling the motion of said Nippon Yusen Kabushiki Kaisya for an order staying proceedings until security was furnished pursuant to the provisions of Rule 50 of the rules enacted by the United States Supreme Court for practice in the Courts of Admiralty of the United States.

2. That Assignment No. XXVIII contained in the Assignment of Errors on file herein be and the same hereby is withdrawn and that all parties waive any right to question on the appeal in said cause



whether the amount of damages which was fixed as being sustained by said Hermosa Amusement Corporation, Ltd. should be fixed at a higher or lower amount.

Dated: June 22nd, 1942.

ALFRED T. CLUFF,  
HUGH B. ROTCHFORD,  
GEO. H. MOORE,  
CLUFF & BULLARD,

Proctor for Appellees.

LILLICK, GEARY, McHOSE &  
ADAMS,  
IRA S. LILLICK,  
JAMES L. ADAMS,

Proctors for Appellants. [916]

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[Title of District Court and Causes.] [917]

STIPULATION AND ORDER DESIGNATING  
PARTS OF RECORD TO BE CERTIFIED  
AND CONTAINED IN RECORD ON AP-  
PEAL [924]

Whereas, Nippon Yusen Kabushiki Kaisya, a corporation, and Fidelity and Deposit Company of Maryland, a corporation, have appealed from those certain final decrees entered on the dates hereinafter mentioned in those certain causes more particularly described hereinafter, and Sterling Carr, receiver in bankruptcy of said Nippon Yusen Kabushiki

Kaisya, has also joined in certain of said appeals; and

Whereas, said causes may be referred to conveniently hereinafter by the letter symbol set opposite the respective number, description and title set forth below:

Symbol—No. of Cause and Description and Title.

A. No. 1138-BH—Hermosa Amusement Corporation, Ltd., a California corporation, libelant, vs. The Motor Vessel "Sakito Maru", etc., Respondents.

B. No. 1138-BH—Hermosa Amusement Corporation, Ltd., a California corporation, Libelant, vs. The Motor Vessel "Sakito Maru", etc., Respondents.

Grace E. Mayo, etc., Libelants in Intervention.

C. No. 1138-BH—Hermosa Amusement Corporation, Ltd., a California corporation, Libelant, vs. The Motor Vessel "Sakito Maru", etc., Respondents.

George W. Berger, Libelant in Intervention.

D. No. 1138-BH—Hermosa Amusement Corporation, Ltd., a California corporation, Libelant, vs. The Motor Vessel "Sakito Maru", etc., Respondents. [925]

Norma Rubin, Lena Karsh, Florence, Lillian and Shirley Rose Karsh, etc., Libelants in Intervention.

Symbol—No. of Cause and Description and Title.

E. No. 1138-BH—Hermosa Amusement Corporation, Ltd., a California corporation, Libelant, vs. The Motor Vessel “Sakito Maru”, etc., Respondents.

Albertine K. Johnson, etc., Libelants in Intervention.

F. No. 1138-BH—Hermosa Amusement Corporation, Ltd., a California corporation, Libelant, vs. The Motor Vessel “Sakito Maru”, etc., Respondents.

John Gilbert Montgomery, etc., Libelants in Intervention.

G. No. 1138-BH—Hermosa Amusement Corporation, Ltd., a California corporation, Libelant, vs. The Motor Vessel “Sakito Maru”, etc., Respondents.

S. T. Elliott, Libelant in Intervention.

H. No. 1146-Y—Roger S. Culp, etc., Libelant, vs. The Motor Vessel “Sakito Maru”, etc., Respondents.

I. No. 1147-BH—Wilma Greenwood, Libelant, vs. The Motor Vessel “Sakito Maru”, etc., Respondents.

J. No. 1148-Y—Helen McGrath, etc., Libelants, vs. The Japanese Motor Vessel “Sakito Maru”, etc., Respondents. [926]

K. No. 1149-RJ—L. R. Ohiser, Libelant, vs. The Motor Vessel “Sakito Maru”, etc., Respondents.

L. No. 1154-B—J. Eldon Anderson, Libelant, vs.

Symbol—No. of Cause and Description and Title.  
The Motor Vessel “Sakito Maru”, etc., Respondents.

M. No. 1155-BH—Lucy Sylvester, etc., Libelants,  
vs. Japanese Motor Vessel “Sakito Maru”,  
etc., Respondents.

N. No. 1296-BH—Wilfred Rasmussen, Libellant,  
vs. The Motor Vessel “Sakito Maru”, etc.,  
Respondents.

and

Whereas, all of said causes arose out of the collision between the Motor Vessel “Sakito Maru” and the Fishing Barge “Olympic II” on September 4, 1940, were consolidated for purposes of trial and, for the convenience of the court on appeal and all parties interested, should be heard and considered on appeal on a consolidated record; and

Whereas, it appears that certain pleadings, testimony and exhibits in said causes, immaterial to the appeals in said causes, can be omitted from the record;

Now, therefore, it is hereby stipulated and agreed that the record on appeal in all of said causes shall be consolidated and shall consist of the following:

(Cause A)

1. First amended libel in rem and in personam.
2. Monition and return thereof.
3. Claim of Nippon Yusen Kabushiki Kaisya.
4. Stipulation and bond for release of vessel. [927]



5. Answer to original libel and attached interrogatories propounded to libelant.

6. Answer to first amended libel.

7. Cross-libel.

8. Citation on cross-libel.

9. Substitution of attorneys.

10. Order of U. S. District Judge Paul J. McCormick dated February 3, 1941.

11. Amended petition to bring in third party respondents filed May 13, 1941.

12. Citation against third party respondents dated May 13, 1941.

13. Libelant's answer to interrogatories.

14. Answer to amended petition to bring in third party respondents.

15. Answer to cross-libel and attached interrogatories propounded to cross-libelant.

16. Notice of motion for continuance of trial and affidavit of James L. Adams in support thereof.

17. Answer of third party respondents to intervening libels.

18. Amendment to amended petition to bring in third party respondents and order authorizing the same dated September 19, 1941.

19. Answers of cross-libelant to interrogatories.

20. Minute order of court of September 8, 1941, denying motion for continuance of trial.

21. Written opinion of court dated October 31, 1941.

22. Order of reference dated November 5, 1941.

23. Stipulation as to reasonableness of stipulated decrees filed December 16, 1941. [928]

24. Report of commissioner.

25. Minute order of court of March 16, 1942, ruling on exceptions to report of commissioner.

26. Final decree entered March 17, 1942.

(Cause B)

27. Amended libel in intervention.

28. Answer to amended libel.

29. Final decree entered December 19, 1941.

30. Satisfaction of final decree.

(Cause C)

31. Libel in intervention.

32. Answer to libel.

33. Final decree entered March 19, 1942.

34. Satisfaction of final decree.

(Cause D)

35. Libel in intervention filed September 6, 1941.

36. Answer to libel.

37. Final decree on second and third counts entered December 19, 1941.

38. Final decree on first count entered March 23, 1942.

39. Satisfaction of final decree entered December 19, 1941.

40. Satisfaction of final decree entered March 23, 1942.

(Cause E)

41. Libel in intervention.

- 42. Answer to libel. [929]
- 43. Amendment to libel.
- 44. Answer to amendment to libel.
- 45. Final decree entered December 22, 1941.
- 46. Satisfaction of final decree.

(Cause F)

- 47. Libel in intervention.
- 48. Answer to libel.
- 49. Final decree entered December 19, 1941.

(Cause G)

- 50. Libel in intervention.
- 51. Answer to libel.
- 52. Final decree entered December 22, 1941.

(Cause H)

- 53. Amended libel.
- 54. Answer to amended libel.
- 55. Petition to bring in third party respondents.
- 56. Citation against third party respondents.
- 57. Answer to Hermosa Amusement Corporation, Ltd. to amended libel and petition.
- 58. Final decree entered December 19, 1941.
- 59. Satisfaction of final decree.

(Cause I)

- 60. Libel.
- 61. Answer to libel.
- 62. Petition to bring in third party respondents.
- 63. Answer of Hermosa Amusement Corporation, Ltd. to libel and petition. [930]

64. Final decree entered December 19, 1941.

65. Satisfaction of final decree.

(Cause J)

66. Amended libel.

67. Answer to amended libel.

68. Petition to bring in third party respondents.

69. Answer of Hermosa Amusement Corporation, Ltd. to amended libel and petition.

70. Final decree entered December 19, 1941.

71. Satisfaction of final decree.

(Cause K)

72. Libel.

73. Answer to libel.

74. Petition to bring in third party respondents.

75. Answer of Hermosa Amusement Corporation, Ltd. to libel and petition.

76. Final decree entered December 19, 1941.

77. Satisfaction of final decree.

(Cause L)

78. Libel.

79. Answer to libel.

80. Petition to bring in third party respondents.

81. Answer of Hermosa Amusement Corporation, Ltd. to libel and petition.

82. Final decree entered December 19, 1941. [931]

(Cause M)

83. Amended libel.

84. Answer to amended libel.



- 85. Petition to bring in third party respondents.
- 86. Answer of Hermosa Amusement Corporation, Ltd. to amended libel and petition.
- 87. Final decree entered December 19, 1941.
- 88. Satisfaction of final decree.

(Cause N)

- 89. Libel.
- 90. Answer to libel.
- 91. Petition to bring in third party respondents.
- 92. Answer of Hermosa Amusement Corporation, Ltd. to libel and petition.
- 93. Final decree entered December 22, 1941.

(All Causes)

94. All testimony and proceedings at the trial, omitting all testimony in the reporter's transcript beyond page 868 thereof.

95. All exhibits offered at the trial and received in evidence, including the deposition of T. Yokota, G. Kato, S. Shimada, Spencer F. Hewins, David H. Bartlett and Philip J. Moynahan, with attached exhibits.

96. All testimony, stipulations and rulings of the court at hearing of motion for continuance on September 8, 1941.

(Cause A)

97. Motion of receiver in bankruptcy to intervene and stipulation regarding hearing of motion.

98. Order granting leave to intervene by receiver in bankruptcy. [932]

99. Petition for appeal.
100. Assignment of errors.
101. Order allowing appeal.
102. Bond for costs on appeal.
103. Citation and acknowledgment of service thereof.

(Cause B)

104. Petition for appeal.
105. Assignment of errors.
106. Order allowing appeal.
107. Bond for costs on appeal.
108. Citation and acknowledgment of service thereof.
109. Stipulation and order of April 27, 1942, extending time to docket appeal.
110. Order of May 4, 1942, extending time to docket appeal.
111. Motion of receiver in bankruptcy to intervene.
112. Minute order denying motion of receiver.

(Cause C)

113. Motion of receiver in bankruptcy to intervene and stipulation regarding hearing of motion.
114. Order granting leave to intervene by receiver in bankruptcy.
115. Petition for appeal.
116. Assignment of errors.
117. Order allowing appeal.
118. Bond for costs on appeal.

119. Citation and acknowledgment of service thereof. [933]

(Cause D)

120. Petition for appeal filed March 19, 1942.

121. Assignment of errors filed March 19, 1942.

122. Order of March 19, 1942, allowing appeal.

123. Bond for costs on appeal filed March 19, 1942.

124. Citation of March 19, 1942, and acknowledgment of service thereof.

125. Stipulation and order of April 27, 1942, extending time to docket appeal.

126. Order of May 4, 1942, extending time to docket appeal.

127. Motion of receiver in bankruptcy to intervene.

128. Minute order denying motion of receiver.

129. Motion of receiver in bankruptcy to intervene.

130. Order granting leave to intervene by receiver in bankruptcy.

131. Petition for appeal filed May 5, 1942.

132. Assignment of errors filed May 5, 1942.

133. Order of May 5, 1942, allowing appeal.

134. Bond for costs on appeal filed May 5, 1942.

135. Citation of May 5, 1942, and acknowledgment of service thereof.

(Cause E)

136. Petition for appeal.

137. Assignment of errors.

- 138. Order allowing appeal.
- 139. Bond for costs on appeal.
- 140. Citation and acknowledgment of service thereof.
- 141. Stipulation and order of April 27, 1942, extending time to docket appeal. [934]
- 142. Order of May 4, 1942, extending time to docket appeal.
- 143. Motion of receiver in bankruptcy to intervene.
- 144. Minute order denying motion of receiver.

(Cause F)

- 145. Petition for appeal.
- 146. Assignment of errors.
- 147. Order allowing appeal.
- 148. Bond for costs on appeal.
- 149. Citation and acknowledgment of service thereof.
- 150. Stipulation and order of April 27, 1942, extending time to docket appeal.
- 151. Order of May 4, 1942, extending time to docket appeal.
- 152. Motion of receiver in bankruptcy to intervene.
- 153. Minute order denying motion of receiver.

(Cause G)

- 154. Petition for appeal.
- 155. Assignment of errors.
- 156. Order allowing appeal.
- 157. Bond for costs on appeal.



158. Citation and acknowledgment of service thereof.

159. Stipulation and order of April 27, 1942, extending time to docket appeal.

160. Order of May 4, 1942, extending time to docket appeal.

161. Motion of receiver in bankruptcy to intervene.

162. Minute order denying motion of receiver. [935]

(Cause H)

163. Petition for appeal.

164. Assignment of errors.

165. Order allowing appeal.

166. Bond for costs on appeal.

167. Citation and acknowledgment of service thereof.

168. Stipulation and order of April 27, 1942, extending time to docket appeal.

169. Order of May 4, 1942, extending time to docket appeal..

170. Motion of receiver in bankruptcy to intervene.

171. Minute order denying motion of receiver.

(Cause I)

172. Petition for appeal.

173. Assignment of errors.

174. Order allowing appeal.

175. Bond for costs on appeal.

176. Citation and acknowledgment of service thereof.

177. Stipulation and order of April 27, 1942, extending time to docket appeal.

178. Order of May 4, 1942, extending time to docket appeal.

179. Motion of receiver in bankruptcy to intervene.

180. Minute order denying motion of receiver.

(Cause J)

181. Petition for appeal.

182. Assignment of errors.

183. Order allowing appeal.

184. Bond for costs on appeal. [936]

185. Citation and acknowledgment of service thereof.

186. Stipulation and order of April 27, 1942, extending time to docket appeal.

187. Order of May 4, 1942, extending time to docket appeal.

188. Motion of receiver in bankruptcy to intervene.

189. Minute order denying motion of receiver.

(Cause K)

190. Petition for appeal.

191. Assignment of errors.

192. Order allowing appeal.

193. Bond for costs on appeal.

194. Citation and acknowledgment of service thereof.

195. Stipulation and order of April 27, 1942, extending time to docket appeal.

196. Order of May 4, 1942, extending time to docket appeal.

197. Motion of receiver in bankruptcy to intervene.

198. Minute order denying motion of receiver.

(Cause L)

199. Petition for appeal.

200. Assignment of errors.

201. Order allowing appeal.

202. Bond for costs on appeal.

203. Citation and acknowledgment of service thereof.

204. Stipulation and order of April 27, 1942, extending time to docket appeal.

205. Order of May 4, 1942, extending time to docket appeal. [937]

206. Motion of receiver in bankruptcy to intervene.

207. Minute order denying motion of receiver.

(Cause M)

208. Petition for appeal.

209. Assignment of errors.

210. Order allowing appeal.

211. Bond for costs on appeal.

212. Citation and acknowledgment of service thereof.

213. Stipulation and order of April 27, 1942, extending time to docket appeal.

214. Order of May 4, 1942, extending time to docket appeal.

215. Motion of receiver in bankruptcy to intervene.

216. Minute order denying motion of receiver.

(Cause N)

217. Petition for appeal.

218. Assignment of errors.

219. Order allowing appeal.

220. Bond for costs on appeal.

221. Citation and acknowledgment of service thereof.

222. Stipulation and order of April 27, 1942, extending time to docket appeal.

223. Order of May 4, 1942, extending time to docket appeal.

224. Motion of receiver in bankruptcy to intervene.

225. Minute order denying motion of receiver. [938]

(All Causes)

226. Order of June 15, 1942, extending time to docket appeal

227. Stipulation waiving damage questions on appeal and withdrawing assignments with reference thereto.

228. This stipulation and order.

It is further stipulated and agreed that each pleading or document whose foregoing item number is



listed below may be treated appropriately as typical of similar pleadings or documents filed in each of the causes set forth opposite such respective item numbers listed below:

Item No.	Causes
3	B, C, D, E, H, I, J, K.
16	All
20	All
21	All
56	I, J, K, L, M, N.

It is further stipulated and agreed that in making up and certifying the record to be transmitted to the Circuit Court of Appeals for the Ninth Circuit, the Clerk of the above entitled Court shall omit all formal captions and titles, except the caption upon the libel or the amended libel, as the case may be, and the final decree in each of the causes, substituting therefor the words "Title of Court and Cause"; that all verifications may be omitted, substituting therefor the word "Verified"; that the Clerk of the above entitled Court be and he hereby is requested to certify all the original exhibits offered at the trial and at the aforesaid hearing before the Commissioner and admitted in evidence, except those omitted by stipulation herein, and to forward the same with the record to the Circuit Court of Appeals for the [939] Ninth Circuit; that the Clerk of the above entitled Court be and he hereby is requested to prepare and certify for the Circuit Court of Appeals for the Ninth Circuit the

record on appeal in accordance with this stipulation and with Rule 5 of the Rules in Admiralty of the United States Circuit Court of Appeals for the Ninth Circuit.

June 19, 1942.

ALFRED T. CLUFF,  
HUGH B. ROTCHFORD,  
GEO. H. MOORE,  
CLUFF & BULLARD,

Proctors for Appellees.

LILLICK, GEARY, McHOSE &  
ADAMS,

IRA S. LILLICK,  
JAMES L. ADAMS,

Proctors for Appellants.

It is so ordered this 22 day of June, 1942.

BEN HARRISON,  
U. S. District Judge.

[Endorsed]: Filed Jun. 22, 1942. [940]

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[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO APOSTLES  
ON APPEAL

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 956, inclusive, contain full, true and correct copies of the following:

In Case No. 1138-BH Adm. First Amended Libel in Rem and in Personam of Hermosa Amusement Corporation, Ltd.; Monition and Return thereof; Claim of Nippon Yusen Kabushiki Kaisya, a corporation; Stipulation and Bond for Release of Vessel; Answer of Nippon Yusen Kabushiki Kaisya to Libel of Hermosa Amusement Corporation, Ltd. and Interrogatories; Answer of Nippon Yusen Kabushiki Kaisya, a corporation, to First Amended Libel of Hermosa Amusement Corporation, Ltd.; Cross-Libel of Nippon Yusen Kabushiki Kaisya, a corporation; Citation on Cross-Libel; Substitution of Attorneys; Order dated February 3, 1941, transferring cases to Judge Harrison; Amended Petition to bring in Third Party Respondents under Admiralty Rule 56, filed May 13, 1941; Citation against Third Party Respondents, dated May 13, 1941; Libelant's Answers to Interrogatories Attached to Answer of Claimant and Respondent, Nippon Yusen Kabushiki Kaisya; Answer of Hermosa Amusement Corporation, Ltd. (Libelant Herein) and J. M. Andersen to Amended Petition of Nippon Yusen Kabushiki Kaisya to Bring in Third Party Respondents; Answer of Hermosa Amusement Corporation, Ltd. to Cross-Libel of Nippon Yusen Kabushiki Kaisya; Notice of Motion for Continuance of Trial, and Affidavit of James L. Adams; Answer of Hermosa Amusement Corporation, Ltd. and J. M. Andersen, Respondents and Third Party Respondents, to Intervening Libels; Amendment to Amended Petition to Bring in

Third Party Respondents under Admiralty Rule 56, and form of order (unsigned) thereon; Minute Order dated September 19, 1941, that Amendment to Amended Petition to Bring in Third Party Respondents under Admiralty Rule 56 re Intervening Libel of S. T. Elliott be filed; [950] Answers of Cross-Libellant to Interrogatories propounded by Cross-Respondent; Minute Order of September 8, 1941 Denying Continuance of Trial; Opinion, dated October 31, 1941; Order of Reference to Commissioner; Stipulation as to Reasonableness of Stipulated Decrees; Report of Commissioner; Minute Order of March 16, 1942, Ruling on Exceptions to Commissioner's Report; Final Decree and Judgment for Libellant, Hermosa Amusement Corporation, Ltd.; Motion of Receiver in Bankruptcy to Intervene; Order Granting Leave to Intervene by Receiver in Bankruptcy; Petition for Appeal; Assignment of Errors; Order Allowing Appeal; Bond for Costs on Appeal;

In Case No. 1138-BH Adm. (Intervention of Grace E. Mayo, etc., et al.): Order re filing of Amended Libel, and Amended Libel in Intervention of Grace E. Mayo and Frank F. Mayo; Answer to Amended Libel in Intervention of Grace E. Mayo and Frank F. Mayo and Interrogatories; Final Decree; Satisfaction of Final Decree; Petition for Appeal; Assignment of Errors; Order Allowing Appeal; Bond for Costs on Appeal; Stipulation and Order of April 27, 1942, extending time to docket Appeal; Order Allowing Extension of



Time for Filing Apostles; Motion of Receiver in Bankruptcy to Intervene;

In Case No. 1138-BH Adm. (Intervention of George W. Berger): Libel in Rem and in Personam by George W. Berger in Intervention; Answer to Libel in Intervention of George W. Berger and Interrogatories; Final Decree on Libel in Intervention of George W. Berger; Satisfaction of Final Decree; Motion of Receiver in Bankruptcy to Intervene; Order Granting Leave to Intervene by Receiver in Bankruptcy; Petition for Appeal; Assignment of Errors; Order Allowing Appeal; Bond for Costs on Appeal;

In Case No. 1138-BH Adm. (Intervention of Norma Rubin, et al.): Intervening Libel of Norma Rubin, Lena Rubin, Florence, Lillian and Shirley Rose Karsh in Rem and in Personam; Answer to Libel in Intervention of Norma Rubin, Lena Karsh, Florence, Lillian and Shirley Rose Karsh, by Lena Karsh, their Mother and Guardian Ad Litem and [951] Interrogatories; Decree on Second and Third Counts of Intervening Libel of Lena Karsh, Florence, Lillian and Shirley Rose Karsh by their Mother and Guardian ad Litem, Lena Karsh; Decree on First Count of Intervening Libel of Norma Rubin; Satisfaction of Final Decree entered December 19, 1941; Satisfaction of Final Decree on First Count of Intervening Libel of Norma Rubin; Petition for Appeal, filed March 19, 1942; Assignment of Errors, filed March 19, 1942; Order Allowing Appeal, filed March 19, 1942; Bond for Costs

on Appeal, filed March 19, 1942; Stipulation and Order Extending Time to Docket Appeal, filed April 27, 1942; Order Allowing Extension of Time for Filing Apostles; Motion of Receiver in Bankruptcy to Intervene, filed May 4, 1942; Motion of Receiver in Bankruptcy to Intervene, filed May 4, 1942; Order Granting Leave to Intervene by Receiver in Bankruptcy; Petition for Appeal, filed May 5, 1942; Assignment of Errors, filed May 5, 1942; Order Allowing Appeal, filed May 5, 1942; Bond for Costs on Appeal, filed May 5, 1942;

In Case No. 1138-BH Adm. (Intervention of Elwood Johnson and Albertine K. Johnson): Libel in Intervention; Answer to Libel in Intervention of Elwood Johnson and Albertine K. Johnson, and Interrogatories; Amendment to Libel in Rem and in Personam; Answer of Nippon Yusen Kabushiki Kaisya to Amendment to Libel in Rem and in Personam; Final Decree; Satisfaction of Final Decree; Petition for Appeal; Assignment of Errors; Order Allowing Appeal; Bond for Costs on Appeal; Stipulation and Order of April 27, 1942, Extending Time to Docket Appeal; Order Allowing Extension of Time for Filing Apostles; Motion of Receiver in Bankruptcy to Intervene;

In Case No. 1138-BH Adm. (Intervention of John Gilbert Montgomery, etc.): Libel in Intervention in Personam; Answer to Libel in Intervention of John Gilbert Montgomery, by his Guardian ad Litem, Margerie L. Montgomery, and Interrogatories; Final Decree of Libelant in Intervention

John Gilbert Montgomery; Petition for Appeal; Assignment of Errors; Order Allowing Appeal; Bond for Costs [952] on Appeal; Stipulation and Order of April 27, 1942, Extending Time to Docket Appeal; Order Allowing Extension of Time for Filing Apostles; Motion of Receiver in Bankruptcy to Intervene;

In Case No. 1138-BH Adm. (Intervention of S. T. Elliott): Libel in Intervention in Rem and in Personam for Personal Injuries and Property Damage; Answer of Nippon Yusen Kabushiki Kaisya to Libel in Intervention of S. T. Elliott; Final Decree; Petition for Appeal; Assignment of Errors; Order Allowing Appeal; Bond for Costs on Appeal; Stipulation and Order of April 27, 1942, Extending Time to Docket Appeal; Order Allowing Extension of Time for Filing Apostles; Motion of Receiver in Bankruptcy to Intervene;

In Case No. 1146-BH Adm. Amended Libel in Rem and in Personam; Answer to Amended Libel in Rem and in Personam; Petition to Bring in Third Party Respondents Under Admiralty Rule 56; Citation against Third Party Respondents; Answer of Hermosa Amusement Corporation, Ltd. and J. M. Andersen, Third Party Respondents, to Amended Libel and Third Party Petition; Final Judgment and Decree in Rem and in Personam; Satisfaction of Final Decree; Petition for Appeal; Assignment of Errors; Order Allowing Appeal; Bond for Costs on Appeal; Stipulation and Order of April 27, 1942, Extending Time to Docket Appeal; Order Allowing Extension of Time for Filing

Apostles; Motion of Receiver in Bankruptcy to Intervene;

In Case No. 1147-BH Adm.: Libel in Rem and in Personam; Answer to Libel of Wilma Greenwood and Interrogatories; Petition to Bring in Third Party Respondents under Admiralty Rule 56; Answer of Hermosa Amusement Corporation, Ltd. and J. M. Andersen, Third Party Respondents, to Libel and Third Party Petition; Decree; Satisfaction of Final Decree; Petition for Appeal; Assignment of Errors; Order Allowing Appeal; Bond for Costs on Appeal; Stipulation and Order of April 27, 1942, Extending Time to Docket Appeal; Order Allowing Extension of Time for Filing Apostles; Motion of Receiver in Bankruptcy to Intervene; [953]

In Case No. 1148-BH Adm. Amended Libel in Rem and in Personam for Wrongful Death Arising out of Collision; Answer to Amended Libel of Helen McGrath, Helen McGrath as Administratrix, and Helen McGrath as Special Administratrix, and Interrogatories; Petition to Bring in Third Party Respondents under Admiralty Rule 56; Answer of Hermosa Amusement Corporation, Ltd. and J. M. Andersen, Respondents and Third Party Respondents to First Amended Libel and Third Party Petition; Final Decree for Libelants; Satisfaction of Judgment and Final Decree; Petition for Appeal; Assignment of Errors; Order Allowing Appeal; Bond for Costs on Appeal; Stipulation and Order of April 27, 1942, Extending Time to Docket Appeal; Order Allowing Extension of Time for



Filing Apostles; Motion of Receiver in Bankruptcy to Intervene;

In Case No. 1149-BH Adm. Libel in Rem and in Personam; Answer to Libel of L. R. Ohiser, and Interrogatories; Petition to Bring in Third Party Respondents Under Admiralty Rule 56; Answer of Hermosa Amusement Corporation, Ltd. and J. M. Andersen, Third Party Respondents, to Libel and Third Party Petition; Final Decree; Satisfaction of Final Decree; Petition for Appeal; Assignment of Errors; Order Allowing Appeal; Bond for Costs on Appeal; Stipulation and Order of April 27, 1942, Extending Time to Docket Appeal; Order Allowing Extension of Time for Filing Apostles; Motion of Receiver in Bankruptcy to Intervene;

In Case No. 1154-BH Adm. Libel in Personam for Damages; Answer to Libel of J. Eldon Anderson, and Interrogatories; Petition to Bring in Third Party Respondents under Admiralty Rule 56; Answer of Hermosa Amusement Corporation, Ltd. and J. M. Andersen, Respondents and Third Party Respondents, to Libel and Third Party Petition; Judgment; Petition for Appeal; Assignment of Errors; Order Allowing Appeal; Bond for Costs on Appeal; Stipulation and Order of April 27, 1942, Extending Time to Docket Appeal; Order Allowing Extension of Time for Filing Apostles; Motion of Receiver in Bankruptcy to Intervene; [954]

In Case No. 1155-BH Adm. Amended Libel in Rem and in Personam for Wrongful Death Arising out of Collision; Answer of Nippon Yusen Kabushiki Kaisya to Amended Libel; Petition to Bring

in Third Party Respondents under Admiralty Rule 56; Answer of Hermosa Amusement Corporation, Ltd. and J. M. Andersen, Respondents and Third Party Respondents to Amended Libel and Third Party Petition; Decree; Satisfaction of Final Decree; Petition for Appeal; Assignment of Errors; Order Allowing Appeal; Bond for Costs on Appeal; Stipulation and Order of April 27, 1942, Extending Time to Docket Appeal; Order Allowing Extension of Time for Filing Apostles; Motion of Receiver in Bankruptcy to Intervene;

In Case No. 1296-BH Adm. Libel in Personam for Damages; Answer to Libel of Wilfred Rasmussen; Petition to Bring in Third Party Respondents under Admiralty Rule 56; Answer of Hermosa Amusement Corporation, Ltd. and J. M. Andersen, Third Party Respondents, to Libel and Third Party Petition; Final Decree; Petition for Appeal; Assignment of Errors; Order allowing Appeal; Bond for Costs on Appeal; Stipulation and Order of April 27, 1942, Extending Time to Docket Appeal; Order Allowing Extension of Time for Filing Apostles; Motion of Receiver in Bankruptcy to Intervene;

In Cases Numbered 1138-BH Adm. (Intervention of Norma Rubin, et al.), (Intervention of Albertine K. Johnson, et al.), (Intervention of Grace E. Mayo, et al.), (Intervention of John Gilbert Montgomery, etc.), (Intervention of S. T. Elliott), 1146-BH Adm., 1147-BH Adm., 1148-BH Adm., 1149-BH Adm., 1154-BH Adm., 1155-BH Adm.,

1296-BH Adm.: Minute Order of May 4, 1942, denying motions of Receiver in Bankruptcy to Intervene;

In All Causes in This Appeal: Order of June 15, 1942, Allowing Extension of Time for Filing Apostles; Stipulation Waiving Damage Questions, etc. on Appeal and Withdrawing Assignments with Reference thereto; Stipulation and Order Designating Parts of Record to Be Certified and Contained in Record on Appeal; Order of [955] June 29, 1942, Allowing Extension of Time for Filing Apostles, which together with the original Citations on Appeal (herein included and numbered), the original Reporter's Transcripts of the trial and hearing on motion for continuance for trial, and the original Exhibits, including the Depositions of T. Yokota, G. Kato, S. Shimada, Spencer F. Hewins, David H. Bartlett and Philip J. Moynahan and attached exhibits, transmitted herewith, constitute the apostles on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I do further certify that the fees of the clerk for comparing, correcting and certifying the foregoing record amount to \$154.25, which amount has been paid to me by Appellants.

Witness my hand and the seal of the said District Court this 9th day of July, A.D. 1942.

[Seal]

EDMUND L. SMITH,

Clerk.

By THEODORE HOCKE,

Deputy. [956]

REPORTER'S TRANSCRIPT  
HEARING ON MOTION FOR CONTINUANCE  
OF TRIAL

Los Angeles, California,  
Monday, September 8, 1941;  
10:00 a. m.

The Court: All right, proceed.

Mr. Adams: If the Court please, we have several motions on file here and I intended, if the Court had no objection to this procedure, to bring on at this time the motion for a continuance. That motion involves all of the actions, and all of the attorneys representing all of the claimants, I take it, are in court in response to the motion, and the rest of them who are not interested in the death actions are not concerned with that motion, and perhaps it would be advisable to take up the motion for a continuance, first, if the Court agrees with that suggestion.

The Court: That is satisfactory.

Mr. Montgomery, Sr.: Your Honor, before taking up that motion, on behalf of the other counsel, a great many of them—not all of them, but on behalf of the other counsel who have been served with this motion, we say the procedure is quite irregular. to bring a motion to dismiss as to the judgment in rem at this time, after waiting a whole year from the date of giving the bonds, and that the whole matter should go over until the time of trial.

The Court: Well, the only thing, I am not going



to rule on the motion until I have studied the authorities, and I have a busy week. I do not know how I am going to have a chance to pass on the motions before the actual trial, any- [957] how.

Mr. Lippert: On that point, your Honor, I would like also to say on behalf of one of the intervening libelants that we propose to introduce evidence on the question of jurisdiction, unless your Honor is prepared to hear it this morning. I think we have the right to go into the question of the extent of San Pedro Bay, and in that regard we would like to introduce evidence.

Mr. Adams: I have no objection to evidence——

The Court: I am not going to take any evidence this morning: I am going to give you a chance next week.

Mr. Adams: With reference to the motion for a continuance, at the Court's suggestion, I would like to offer into evidence or into the records of this hearing statements of the witnesses who are unavailable and whose depositions cannot be obtained prior to the trial scheduled on September 16th. They cannot be brought here for the trial because they are presently located in Japan. I have the original signed statements of these various witnesses and I can either make a statement as to the manner in which those statements were secured from the witnesses, if counsel will stipulate that such statements——

The Court: As I understand your position, if they were present they would in substance testify as in the statements?

Mr. Adams: That is correct. [958]

The Court: Have opposing counsel, any of them, had an opportunity to examine them?

Mr. Adams: Of course, we only had one or two copies of all these statements. I sent the one available copy to Mr. Cluff.

Mr. Montgomery, Sr.: I have seen the statements, your Honor, and I have shown them to several of the gentlemen. We met in Mr. Cluff's office.

Mr. Cluff: I do not think all of them have seen them, but some of them have.

Mr. Montgomery, Sr.: Those of us who met accepted Mr. Cluff's recommendation that we could stipulate that the witnesses, if called, would so testify. So that if your Honor will call the roll of all present, or have the roll called, I think we can make a stipulation.

Mr. Cluff: Before that stipulation is made, I understood the person who took the statements would make a statement, or take the stand, and I would just like to ask one or two questions.

The Court: Just what is that?

Mr. Cluff: I say, before I enter into a stipulation I would like to ask one or two questions of the gentleman who took the statements.

The Court: I don't think so. I think that that is what they claim is going to be their testimony, and you either stipulate that they will so testify or not. That is [959] what they are claiming, and you can either stipulate that they would so testify or not.

Mr. Cluff: True, and I want to find out if the statements contain all the investigation, or only that part of it they want to introduce.

The Court: If you want to go into that we will continue the matter for that purpose, gentlemen, and take evidence. I think you are right up against this proposition: You either stipulate that the witnesses would so testify if present, or then the Court will go into the question whether or not the case should be continued. Of course, it all involves the same motion, I realize that very well.

Mr. Adams: If the Court please, I do not think the record shows what the disposition of all counsel of record here is with respect to such a stipulation. Of course, I am not going to enter into a stipulation which means that if they stipulate to these we stipulate that our motion should be denied, because I can still recognize the prejudice by not having the full and complete testimony of a witness. That is something that I intended to argue, but I realize that the Court would like to know what counsel are willing to do with reference to these statements.

The Court: Well, let us find out. Have the Clerk call the roll of the counsel.

Mr. Montgomery, Sr.: May I make this further suggestion, your Honor? Or, Mr. Cluff, will you make it? You are [960] familiar with it.

Mr. Cluff: Judge Montgomery suggested an amendment to the proposed stipulation, that is, in addition to the statements, that either side, if so

advised, may use the testimony of the witnesses before the A Board.

Mr. Adams: I am not entering into the stipulation.

Mr. Cluff: Very well.

The Court: As I understand it, the position here of the representatives of the "Sakito Maru" is that they are moving for a continuance, and the showing here is that the witnesses, if present, would testify as set forth in the statements. One way to overcome that is to offer to stipulate. If you do not want to accept them, you may object to them.

Mr. Cluff: In connection with the suggestion I made a moment ago, it just occurred to me that there is as yet no showing as to what these witnesses will testify. I take it Mr. Adams is prepared to represent to the Court that these statements were taken and that the witnesses will testify to them. I have one or two questions I wanted to ask on cross-examination.

The Court: I differ with you, in this:—

Mr. Cluff: I will accept your Honor's ruling, but I just wanted to explain my position.

The Court: I differ with you in this: Here is a motion for a continuance which they claim is for material witnesses [961] and they want those witnesses present. He has presented written statements, and stating that these witnesses would in effect testify as follows:—Now the statements should be made a part of the record.

Mr. Cluff: I think I see your point. I will



take the ruling and offer on behalf of Hermosa Amusement Corporation to stipulate that if the witnesses, who will be identified in Mr. Adams' statement, were called as witnesses in this case they would testify substantially in accordance with the written statements which counsel has in his hand.

Mr. Adams: I would like to offer these, if the Court please.

The Court: You may offer them.

Mr. Cluff: That is done on behalf of the Hermosa Amusement Company and J. M. Anderson, Libellant, Cross-Respondent, Third Party Respondent, and, I think pretty near everything else that we have.

Mr. Montgomery: We accept this——

Mr. Adams: May I describe the statements for the record?

The Court : Yes.

Mr. Adams: There are six statements in all, the first being that of T. Karasuda, first engineer; the second one is that of A. Kanda, apprentice officer; the third is H. Aono, quartermaster; the fourth is K. Mamba, quartermaster; the fifth is E. Yokoyama, apprentice sailor; and the sixth and [962] last is the N. Nakumura, electrical engineer.

I have previously offered them, but I renew my offer.

The Court: I would like to have the Clerk call counsel representing others.

The Clerk: Other than Mr. Cluff?

The Court: Yes, because he only represents the one.

Mr. Adams: I have available, if the Court please, another set of them here, a copy of them, if some of the counsel who have not seen them wish to examine them.

Mr. Montgomery, Sr.: I think counsel should serve us with copies of those.

The Court: I don't think he has to serve you with anything. [This proceeding was more or less suggested by the Court, because the Court felt that the motion itself was not complete enough; in other words, it was too general.

Mr. Montgomery, Sr.: The showing made so far——

The Court: And that the Court, instead of having to wait until the morning of the hearing, if the Court was to grant a continuance, I wanted to grant it today so I could utilize that time, and to shorten it, I suggested that he be prepared to make a showing this morning as to what the witnesses would testify to so that counsel would have an opportunity of offering, and stipulate that they would so testify.

The Clerk: I will call the names of counsel that I have here, your Honor.

Wayland and Stearns, for Grace E. Mayo. [963]

Mr. Stearns: Frank L. Stearns. We will so stipulate, your Honor.

The Clerk: What is your name, please?

Mr. Stearns: Stearns, Frank.

The Clerk: David I. Lippert, for Frank F. Mayo.

Mr. Lippert: I stipulate that the witnesses would so testify, if called.

The Clerk: H. C. Velpmen, for Elwood Johnson and Albertina K. Johnson.

Mr. Velpmen: So stipulate.

Mr. Eastham: H. C. Eastham, for Roger Culp. I will so stipulate, your Honor.

The Clerk: Charles E. Millikan, for Wilma Greenwood.

Mr. Millikan: I will so stipulate, your Honor.

The Clerk: Claude F. Weingand, for L. R. Ohi-ser.

A Voice: Not present.

The Clerk: Reay, Sharf and Reay, for J. Eldon Anderson.

A Voice: Not present.

The Clerk: Harvey R. McKee, for Wilfred Rasmussen.

Mr. McKee: I will so stipulate, your Honor.

The Clerk: Perry G. Briney, for G. W. Berger.

Mr. Briney: Never having heard about these statements before just a few minutes ago and not having seen them, I could not stipulate.

The Court: Then you do not stipulate? [964]

Mr. Briney: Then I do not stipulate.

The Court: That is all you need to say.

The Clerk: Mr. Charles C. Montgomery, for Lena Karsh, Norma Rubin, and others.

Mr. Montgomery, Sr.: We so stipulate.

The Clerk: David A. Fall, for International Broadcasting Company.

Mr. Fall: We so stipulate.

The Clerk: Phi O. Clough and David A. Fall for John Gilbert Montgomery, etc.

Mr. Fall: We accept the same stipulation.

The Clerk: George Harnagle for Helen McGrath.

Mr. Harnagle: I would like to ask Mr. Adams one question, and that is this: Some of these same witnesses have testified under oath before the A Board, did they not?

Mr. Adams: Some of them did; yes.

Mr. Harnagle: Do you have any objection to a stipulation that their testimony before the A Board may also come in, as well as these statements?

Mr. Adams: If the Court please, my position with respect to this stipulation is not exactly clear, certainly, at this time.

[The Court: I think it should be clear. You have not offered to stipulate to anything.

Mr. Adams: No. I feel this way about it, if the Court please: I do not feel that a stipulation that witnesses [965] would testify in accordance with statements that counsel, myself, has obtained in outline form to indicate the nature of their testimony is ever as satisfactory as the actual testimony of those witnesses, given either on the stand or by way of deposition. No one taking that statement from a witness purports to cover every minute and detailed point that he expects that witness will testify to. And I do feel, irrespective of whether this testimony is permitted to be introduced into the record by virtue of counsel stipulating that these witnesses would so testify, that there is a prejudice resulting to the owners of the "Sakito Maru" in



not having the full testimony of those witnesses available either by way of deposition or through the witnesses appearing here at the trial.

The Court: Just a moment. These proceedings are being reported, are they not?

Mr. Adams: Yes.

The Court: I think that the record at this time should show, as the background of this motion, that when the representative of the "Sakito Maru" came here nearly a year ago for the fixing of the bond, that counsel stated that it was necessary for them to put up security with the bonding company, because the bonding company, due to the international situation, were requiring it. In other words, the difficulty in getting these witnesses here today is due to the international situation; and that situation has existed virtually [966] all the time that this case has been pending; that the Court has stated before, not once, but a number of times, either in court or in chambers, when the Court has been discussing some of the preliminary features of this case with counsel that they must arrange to take their depositions; that the Court was not going to unnecessarily delay this case because of the failure to take depositions, because the Court realized the international situation instead of getting better was likely to get worse. And the Court is approaching this motion today cognizant of the fact that we have all been aware, and the Court has so expressed itself, that the international situation was becoming more tense; that the ability to obtain the depositions

of these witnesses would require great lengths of time, and the Court has constantly warned counsel of that situation.

On the other hand, I realize that counsel was anticipating having these witnesses here in person and, therefore, did not take their depositions. Due to the present strained relationship between this government and the Japanese government it has not been possible for these witnesses to be present. However, counsel has had a full opportunity of getting as full statements from those people as he could possibly get; and in view of this stipulation, to the parties who so stipulate, the Court is not inclined to grant a continuance.

It might be more satisfactory if the testimony before the A Board all is admitted, but as I view the situation, [967] these statements and it being stipulated that if they were present they would in substance so testify, that does not preclude the opposing counsel from impeaching that testimony by other statements that they may have made at other times.

Mr. Adams: May I supplement the statement of the background, if the Court please? I was not in court at the time the bonds were fixed, so I am in no position to disagree with the Court, even if I were so inclined, about the statements made as to the collateral posted for the issuance of bonds. But I am rather surprised that anyone would make such a statement, assuming that it might have been made by a representative of our office, because col-

lateral is always required and the international situation could have nothing to do with the requirement of collateral.

The Court: Other counsel present, or any other counsel who recalls that statement?

Mr. Adams: I do not mean to say that the Court has made a misstatement, except I don't think that enters into the situation.

The Court: The point is that the strained relationship of the international situation was right out in front at that time.

Mr. Adams: I would like to just make these few supplementary remarks. I recall very distinctly of the Court having made an announcement from the bench at a hearing we had here in this court room. As I recall, it was in connection [968] with the limitation of liability proceedings that were filed, if I am not mistaken, the latter part of January. Therefore, this hearing probably could not have been before February. I think it was had after the cases were set for trial at the term trial calendar. At that time the Court said that the case would go to trial as scheduled, and the Court wanted everybody to take pains to get the witnesses assembled and be ready to go to trial.

The Court: You also recall the fact that in chambers I have also discussed it with you.

Mr. Adams: Yes.

The Court: The necessity, on account of the number of witnesses, and the fact that they were on the seas, that I have constantly tried to impress

counsel with the necessity of arranging their testimony and evidence so the case could go to trial.

Mr. Adams: I do not dispute that, if the Court please. I just wanted to point out that that first intimation—not “intimation”—but the first statement, I think, the Court made on that subject was after the cases were set for trial, because you will recall that there was, just before setting time, an order consolidating all these cases into this court room, therefore, the Court would not have had reason to make such a statement regarding all these cases beforehand, because it was not until the call of that term calendar that the cases were first brought before your Honor, that is, all [969] of them consolidated for trial. [The statements that were made in informal conferences we had, I think followed the statements the Court made from the bench. If I am not mistaken, it was at the first occasion that the Court mentioned that subject from the bench that I advised the Court that we had already made plans to take the depositions of three of the witnesses upon the arrival of the “Sakito Maru” on June 4, 1941. Plans had been made—

The Court: I recall making the statement that you were expecting to take certain depositions upon the arrival of the boat, because we discussed also the question of whether or not we could set this case for trial at a time the “Sakito Maru” would be in.

Mr. Adams: I believe that is correct; and I believe in answer to that inquiry we pointed out that



there were only three witnesses to the collision who still were aboard the "Sakito Maru."

The Court: And not on regular schedule, either.

Mr. Adams: That is correct; her schedule had been changed at that time. At the time arrangements had been made for those depositions I had also made arrangements for the taking of the testimony of the other witnesses who had previously been aboard the "Sakito Maru" but who were no longer aboard, in the manner which I have set forth in the affidavit on file supporting this motion. In other words, we knew at that time, and had laid plans accordingly, where [970] these witnesses were, on what boats they would arrive at Los Angeles Harbor, approximately the date that they would arrive, and were making plans to obtain the depositions of those witnesses at that time, or at those times.

I must make the statement in answer to something the Court said, that while it is true that we all had apprehension concerning the developments of the international situation, I do not think any of us were in a position to foresee what was going to take place, any more than we can foresee today what is going to take place in the future. I certainly felt that these witnesses would arrive on these vessels. I must admit that I had no inside track to information issuing from the White House concerning the freezing order. It was certainly a surprise to me and I had no way of knowing that assets of Japanese citizens of this country would be frozen, or that retaliatory action would be taken in Japan by a simi-

lar freezing order, and that that would result in all trade between the two countries practically being discontinued. That has, of course, resulted in the cancellation of all the vessels sailing from Japan to this country, and, as a result, these witnesses who were scheduled to come aboard those vessels have not been able to come to the United States and it is for that reason the depositions could not be obtained.

Those remarks, if the Court please, I think are accurate and are just to supplement what the Court intended to add.

The Court: May I make this statement: The Court, in [971] any of its comments, is not indicating that counsel has not been diligent. I do not want to be so understood, that you have not been diligent. I assume that you had a right to rely, counsel, on the fact that your witnesses would be here at such and such a time, and to that extent, any comment I make is not to be considered any reflection on counsel. However, I feel this way: I feel that we have a statement as to the substance of their testimony; you also have their examination before an A Board, if you want to offer it, as either a supplement or a part of this statement. If you simply want to offer this, why, that will be your testimony on that. Of course, the other side, if there is anything contradictory in those statements or that testimony, of course, that is properly impeaching, may offer it. Of course, any testimony is subject to contradictory evidence.

Mr. Adams: If my participation in that situation can be without prejudice to my right to continue to urge the Court that the motion should be granted, irrespective of whether counsel would stipulate that they would testify in that manner, then I would feel free to express my position. I think the Court will appreciate that, by saying and agreeing with counsel that the witnesses would testify in this manner, I still wish to urge upon the Court that that is not yet satisfactory from our standpoint.

The Court: I can understand it is not. That probably is true from both sides, because if the witness were pres- [972] ent they would be subject to cross examination and might or might not hold up under their statements; so it works both ways in that respect. But here we have a situation of—how many liability cases are there altogether? There are eight death claims.

Mr. Adams: Yes; there are eight death claims.

The Court: And certainly those eight death claims and any rights that those parties may have can't wait until the international situation is ironed out.

Mr. Adams: I have some authorities, if the Court please, which I think may be helpful upon this subject.

The Court: I will be glad to hear from you.

Mr. Adams: One of the volumes is not in the library.

Mr. Montgomery, Sr.: We have not finished.

Mr. Harnagle: Mr. Adams has not answered the question which I put to him.

The Court: I think he made it clear before that he is not entering any stipulation. He is stating that they would so testify, and you people are offering to stipulate. The Court may take the position that, in view of the offer of the stipulation, the continuance will be denied.

Mr. Harnagle: My question to him is: Will he also make the testimony before the A Board a part of his offer? I can't see any possible reason why he should not do that.

The Court: Well, he said he would not so stipulate.

Mr. Adams: I will make it part of my offer, if the [973] Court please. I do not think it adds anything. I think the statements substantially cover the same ground, but I will offer the testimony of the three witnesses, Karasuda, Kanda, and I think it was Aona.

Mr. Harnagle: Whoever it was.

Mr. Adams: Before the A Board, as again illustrating substantially what the witnesses would testify to. I have the A Board transcript here containing the testimony of all witnesses who appeared before the A Board, but I certainly would hate to part with that transcript if we are going to still have to go to trial. I wonder if it could be stipulated that the offer is made, and that the transcripts need not be made a part of the record, because counsel undoubtedly have copies of those amongst them or can find a copy, and the A Board has the official copy.



Mr. Fall: May I suggest that at the time of trial it merely be read into the record? I do not believe the testimony is of so great a length of those three witnesses but what it could be read into the record.

Mr. Adams: I think that is correct.

Mr. Harnagle: I will agree to join in that stipulation with the testimony of the A Board.

Mr. Adams: I think that calls for other statements from other counsel, regardless of whether they have spoken before or not.

The Court: All of counsel, do you want the A Board [974] testimony of these three witnesses?

Mr. Cluff: If I may offer the original stipulation, I now offer to amend it, that the witnesses will also testify in accordance with the evidence given before the A Board, that is, the three witnesses who testified before the A Board.

The Court: Are there any counsel who object to that?

Mr. Stearns: On behalf of Grace E. Mayo we so stipulate to add to the stipulation offered.

Mr. Cluff: If anybody objects they might indicate an objection.

The Court: Nobody objected to that amendment.

Mr. Adams: If the Court please, there is just this difficulty with that: All the parties are not represented here.

The Court: I understand there are two parties not represented and one party has not stipulated, and I will take care of those after we get through with the main situation. But you said you had some authorities you wished to submit.

Mr. Adams: Yes; if the Court has completed the record on that particular point. One of the authorities I would like to call the Court's attention to is not in the library here, and I wonder if I could obtain it from your Honor's chambers, 246 Fed. Could I do it, or have the Bailiff get it for me? [975]

The Court: We will get the 246 Fed.

Mr. Adams: I would like in the meantime to call attention of the Court to a statement appearing in Volume 3 of Benedict, Admiralty (6th Edition), pages 109-110.

"If any postponement be desired by either party, on sufficient reason, it is granted by the judge. \* \* \* The nature of maritime transactions is such that witnesses are often transient and their convenience as well as the necessities of the parties, often exercises an important influence in determining the mind of the Court in matters relating to the mere conduct of the hearing. \* \* \*

"It is this flexibility of a Court of Admiralty, its power to adapt itself to the circumstances of the parties and their witnesses, without prejudice, and often with signal advantage to the cause of justice, that constitutes one of its great points of superiority over the courts of common law and over trials by jury."

I just wanted to illustrate by that quotation the power of the Court, sitting as a court of admiralty, with respect to granting this motion for continuance.

The Court: The thing that concerns the Court in this case is that you are not asking a continuance for 30 or 60 days, but you are asking for a continuance that might run into years, an indefinite situation. That is what concerns [976] the Court and makes the Court feel that perhaps it should do the next best thing under the circumstances. I know that anybody would prefer to have their witnesses present in person if it is possible, if they thought their witnesses would stand up.

Mr. Adams: I have no fear of that, and that is why I would like to have them here, if the Court please.

The Court: That is what I say.

Mr. Adams: I have here a case that deals with somewhat an analogous situation that arose during the last war.

The Court: All right.

Mr. Adams: It is not long. If the Court will permit me, I would like to read the facts. The case was before the Third Circuit, *The Kaiser Wilhelm II*, 246 Fed. 786.

“In this case *Harland & Wolff, Ltd.*, a British corporation, filed a libel against the *Steamship Kaiser Wilhelm II*, owned by the *North German Lloyd*, a German corporation, for repairs made to that vessel in libelant’s shipyard in England. By its answer, the *North German Lloyd* admitted the Admiralty jurisdiction of the court below and the premises, but contend-

ed such jurisdiction should not be exercised in the present instance, because the countries of both litigants were at war with each other, and that prior to the filing of this libel the Imperial Government of Germany issued a moratorium, whereby [977] payment of all indebtedness by German to British subjects was forbidden during the war. It was therefore contended that the present enforcement of this claim would compel such German subject to violate the law of its country, and thereby subject itself to pains and penalties. To this answer the British libellant filed exceptions which, in substance, alleged that the facts set forth in the answer did not constitute a defense to the libel. On hearing, the Court, in an opinion reported at 230 Fed. 717, sustained the contention of the North German Lloyd and subsequently entered a decree dismissing the libel. From such decree this appeal was taken. But pending such appeal, and at the hearing in this court, the whole situation was changed by two facts: First, the existence of war between the United States and the Imperial Government of Germany; and, second, the libeled ship, the *Kaiser Wilhelm II*, was taken over by the United States Government by the order in the margin."

The case then sets forth an executive order under which the ship was taken over.

"This being an appeal in admiralty, this court



has authority to consider the case de novo. \* \* \*

And, of course, it will also take judicial notice of the change in situation noted above. That the court [978] below had jurisdiction of the subject-matter and of the parties, if it saw fit to exercise it, is assumed and the question before the Court was therefore as to the propriety of exercising such jurisdiction. Manifestly the exercise of jurisdiction by the courts of a neutral nation between citizens of belligerent powers is a delicate one, and in this case whatever course was followed there would be reasonable complaint by the unsuccessful litigant. For, while the German citizen could assert the enforcement of the claim compelled it to pay a debt its Government had forbidden it to pay, the British citizen could with equal weight complain that the German vessel had sought protection in an American port, it was enabled to do so through the very repairs the libelant made, the libelant had a lien for such helpful repairs on such vessel, that such lien might be lost if the cause were dismissed, and that it would be an unneutral act if it were turned out of court. Bearing in mind the further fact that the Kaiser Wilhelm II, even if this case were dismissed, could not have gone to sea for fear of capture, and that retention of jurisdiction in no way hindered, and dismissal of the libel in no way furthered, the use of the vessel by its German owners, we

are of opinion the court below should not have dismissed the [979] libel and that its decree should be reversed.

“Moreover, the two facts which have come to pass meanwhile, viz., the war with Germany and the taking over of the vessel by the United States Government, give further support to this conclusion, for the action of the Government, in taking over the libeled vessel, changed the practical effects of the decree prayed for, when the libel was filed, in that such decree is now enforced against the German citizens or its property, but in substance and effect would be, if a decree were finally entered as hereafter noted, against the vessel held by the United States. This vessel now taken by the Government as noted, may hereafter be lost, burned, or destroyed, and if the lien be not finally enforced against her in this proceeding, or the hold of the Court upon her be surrendered, it is manifest that the North German Lloyd might, after the war was ended, still remain liable to the libelant for the repairs on the ship, no matter what became of her. The practical effect, therefore, of our dismissing this libel, might eventually work a hardship to the North German Lloyd. So, also, the changed situation makes the British libelant’s nation and our own allies in this war, and it might well be regarded as a well-nigh hostile act on the part of the United States District Court to refuse to [980] exercise its

jurisdiction in behalf of a British citizen. It is manifest the ship cannot now be returned to the German subject, just as it could not have been really returned to such owner for use at any time since the libel was filed. Therefore there is no practical reason why jurisdiction should be declined on the ground that retention was an unneutral act, when we were at peace with Germany, or is now an unjust act toward the citizen of a country with which we are at war. The fact that the ship has now been taken from the possession of the Court by the Government would not prevent the Court from hereafter adjudicating the several rights of the parties litigant if possession of the ship should later be restored, or if the Government saw fit hereafter and of its own accord to pay into court such amount as would satisfy this lien. It is apparent, therefore, that no harm can be done to the two litigants or to the Government by the lower court retaining its jurisdiction of the libel for the present. If, as is no doubt the case, the counsel for the German claimant cannot at this time properly procure proofs and present his client's case, the Court can, and no doubt will, delay action until this can be done. On the other hand, retention of jurisdiction may afford a tribunal for hereafter [981] deciding questions which might possibly arise growing out of the seizure of this and other vessels by the Government, if the Government

should desire an adjudication by a court as last resort.

“This case is exceptional in its situation, and calls for the exercise of that range of discretion which the broad powers of a Court of Admiralty enable it to exercise. Such broad powers and range of discretion are, in our judgment, fittingly exercised by an order which will make due provision for, first, giving the German citizen and belligerent an opportunity to litigate his rights if relations with his country are hereafter resumed; second, providing for adjudging, if the Government hereafter so desires, its rights and liabilities, if any, in taking over libeled property of the German subject; third, adjudging hereafter what effect the taking of this ship by the Government had on the claim of the British lienor, and the further obligation of the German vessel owners as between themselves.

“In following this course, and protecting the unprotected rights of an absent German citizen while this country is at war with the Imperial Government of its country, we are impelled by three all-sufficient reasons: First, the innate sense of fairness, decency, and justice which respects the [982] rights of an enemy; second, the broad principles of international intercourse, which leads courts and nations that believe in international rights, to be the more careful to observe them toward belligerents; and lastly, because the awarding to this German citi-



zen, with whom our country is at war, the careful preservation until times of peace of its rights is in line with those high ideals of Anglo-Saxon justice which led the British courts years ago, in *re Boussmaker*, 13 Vesey, 71, decided in 1806, to allow the claim of an alien enemy to be proved in time of war and in the dividends held by the British court until peace. Indeed, the fact that our country is now at war with Germany is all the more reason why this Court should most scrupulously award to this German citizen those international and equitable rights which no fair-minded people ever deny even to their enemies in times of war.

“We are therefore of opinion the decree of the court below should be reversed, the libel reinstated, with leave to the court and parties to take further steps and proceedings in the case as are not at variance with the views above indicated, and that a certified copy of this opinion be furnished by the Clerk to the State Department and the Department of [983] Justice of the United States.”

If the Court please, it seems to me that if a Court should be actuated by that sense of decency and fairness with regards to a citizen of a country with whom this country is at war, it should be similarly guided, certainly, with respect to a citizen of a country with whom we are not at war, but with respect to which normal relations and normal means of intercourse do not exist.

I intend to prove that no N. Y. K. vessel has arrived at the United States since the early part of August; that letters written from Japan as late as, I believe, June or July 25th have only arrived at the Los Angeles office of N. Y. K. this morning, so as to indicate the lack of correspondence and means of correspondence and communication by mail between these two countries; and I intend to prove by a witness that the scheduled sailings of these vessels which have been enumerated in my affidavit have been canceled.

The Court: I think the Court would almost take judicial knowledge of the fact that these witnesses who had not left Japan before the present strained relationship developed could not arrive; but it is my understanding that it is more or less of a common practice in admiralty, that is, in any litigation, that where a person asks for a continuance on the ground that a witness is missing—I think you have five or seven—which is it?

Mr. Adams: Six. [984]

The Court: —Six witnesses.

Mr. Adams: I might explain that there are seven, with the captain of the boat, to get here.

The Court: —Where there are witnesses missing, it is a common practice for a person making the motion to set forth the substance of that testimony and its materiality to you in court. Here it develops that these witnesses, in substance, would testify as set forth in their statements and the opposing counsel are willing to stipulate that if they were present they would so testify. Whether it is strained

relationship or whether it is the ordinary litigation, that would be sufficient upon which to deny a motion for a continuance. If it had not been for the fact of this stipulation it would be a very serious question in the Court's mind as to whether it should not be continued, irrespective of the fact that the Court feels that these people are entitled to their day in court; but in view of that stipulation I feel that the motion for a continuance should be denied.

However, I will say this, that in the course of trial, if testimony comes out that it develops that the immateriality is such that the Court feels it would be advantageous to the Court to have the parties present, the Court may continue the case then for an opportunity to get the depositions of those parties. I do not know at this time to what extent this testimony is cumulative. It may be that part of this [985] testimony is cumulative. It was suggested the other day, you remember, when we discussed it, that it might be, some of it, cumulative. Whether it is or not I do not know until the evidence is in. But I feel, in view of the fact that there are so many people involved in these cases, death claims of eight people, that the question arises: Are they going to be deprived indefinitely of any right they have of recovery?

Another query is as to whether or not the "Sakito Maru," the N. Y. K. line has not had full opportunity of having the depositions of these witnesses taken.

And third, in view of the fact of the offered stipulation by all but three of the parties, I think that as

to those parties who have stipulated the motion for a continuance should be denied. If the other three parties do not stipulate within 48 hours, I am going to continue those three cases.

Mr. Adams: In order that our position may be clear, if the Court please, I wish to state for the record that I agree that the witnesses would testify substantially as shown in those statements, and that with respect to the three witnesses who testified before the A Board, that they would testify substantially as they did before the A Board, as shown in the transcript of that testimony. By agreeing to that, as previously mentioned, I do not wish to prejudice my position with regard to urging upon the Court that, irrespective of the counsel's willingness to stipulate that, we are [986] still entitled to a continuance, and I think I should resist the——

The Court: I understand your position to be that it is always better to have the witnesses present; that the Court has an opportunity of observing the witnesses and observing the method of their testimony, and also he is in a better position to judge of the witness' credibility.

Mr. Adams: Correct.

The Court: And also, that additional details which might add strength to his testimony would be present and of advantage to the Court and to your client in presenting its side of the controversy. I understand your position. At the time of the trial, these statements, if offered as their testimony, will be recognized by the Court as their testimony and any counsel raising any objection to it, his case will



be continued indefinitely until the normal relations are resumed with the Far East.

Mr. Adams: I would like to make one further statement, if the Court please, on this subject of a continuance. We have just been served—and when I say “we,” I really mean the N. Y. K. line has just been served—with a copy of a libel in a new case that has been filed just a few days ago. Service was made on September 3rd, I believe, in San Francisco. It is a suit for personal injuries by someone who, I believe, was a passenger aboard the barge, for \$5,000. The precise situation will not be learnable for some time on that. The [987] case can’t possibly be at issue before September 16th.

I wish to also call the Court’s attention to another feature which I think has quite a bearing upon the subject of a continuance, and that has to do with the limitation proceedings. Mr. Cluff and I intended to ask the Court to rule upon several questions we have had before your Honor before. I do not believe they were upon the Court’s calendar, but we want to call an informal conference, and we are prepared to bring them up here today. One of those matters is a motion by Mr. Cluff to vacate the order that the Court has previously entered, I believe on June 30, 1941, requiring a surrender of the shore boats. He has also moved that process shall issue——

The Court: These are matters just between you and Mr. Cluff, are they not?

Mr. Adams: Yes. And I wanted to illustrate——

The Court: I want to say that those other mat-

ters I will have to take up at probably 4:00 o'clock this afternoon.

Mr. Adams: I see.

The Court: Because I have a criminal calendar awaiting and a large number of defendants present. Those matters I will take up later.

Mr. Adams: May I indicate how that might affect it? I don't care to argue it now.

The Court: I want to give you a full opportunity to be heard on this present motion. [988]

Mr. Adams: If the Court vacates this prior order, issues process in that limitation proceeding, that process will be in the form of a monition directed against all parties who have a claim against the Hermosa Amusement Corporation or have a suit against the Hermosa Amusement Corporation. Those parties, under the United States Supreme Court Admiralty Rules, will have 30 days within which to file a claim. They will also, after filing claim, have a right to contest that petition by filing an answer to the petition and contesting either the petition to limit liability or to exclude the Hermosa Amusement Corporation liability or both. Those matters cannot conceivably be brought to issue before September 16th. If they are not, then this monition stands against all of these claims and actions against the Hermosa, and that monition, incidentally, is a statutory injunction. I take it, then, at the coming trial, if that monition issues all of these actions against the Hermosa will be settled and all these parties will be permitted to proceed against the N. Y. K. line and "Sakito Maru" alone, or else the Court will permit another trial on

the limitation proceeding at some time in the future, and all this matter will have to be gone over again then.

Now I urge that situation upon the Court as having a vital influence upon this motion for a continuance at this time.

The Court: I think there is considerable merit to your [989] position there. I have felt that it has been unfortunate that the matter is not at issue. I would like to hear from the other side on that. I am rather inclined to feel that this case should not go to trial until it is completely at issue and until you people quit playing and going around. When I say "playing and going around," I mean what you have to do before you get down to business.

Mr. Briney: I failed to *anticipate* a while ago because I had not read those statements. I have read them since and while the Court was making a few remarks a while ago, I was telling Mr. Cluff I was willing to enter the stipulation.

The Court: In the same matter, I believe the case of Lucy Sylvester was not called, No. 1155.

Mr. Allen: For Philip L. Wilson, we will so stipulate.

Mr. Montgomery, Jr.: May I also make a statement? So far as the case of S. P. Reynold, (?) which is the case Mr. Adams refers to as not being at issue, I will make the stipulation now. I don't know whether we can get this worked out before the time of trial or not.

Mr. Cluff: If the Court please, with respect to the limitation matter, that is something that seems really to relate only to counsel.

The Court: Here, let us get right down to business. I do not want to have to continue this motion and make all you gentlemen come back, but I can only hear you a few minutes more because I have a long criminal calendar here. [990] Mr. Adams points out that your case is, in one sense, really not strictly at issue.

Mr. Cluff: The limitation case, that is perfectly true, your Honor, but I have avoided the usual sequence in that situation. Pleading the limitation in our answers to this case, I have proposed not to ask for process in the limitation case, so there will be no injunction or until the issues of libaility have been determined here. Then, if the situation calls for it, we can use the limitation proceeding as an administrative procedure. If the decision be another way, the question may be entirely removed.

The Court: I know, but the question I want to know is this: I don't know anything about admiralty, as I am waiting for all you gentlemen to teach me, and I think there are others who are going to be taught some things as we go along, too, maybe some teaching from both ways. What I want to know is whether the case is at issue.

Mr. Cluff: On the question of liability, I take it that is what you mean?

Ths Court: Mr. Adams says not.

Mr. Adams: It is not at issue in any respect, if the Court please.

Mr. Cluff: I say Mr. Adams is entirely wrong.

Mr. Adams: Just a minute now, if the Court please. We are talking about the limitation of liabil-



ity proceedings, if they are at issue. No process has issued, no one has [991] filed a pleading, no one has filed a claim, no one has filed an answer or even exception to the pleadings. How could it be at issue?

The Court: Then we could try all the cases except the "Olympic"?

Mr. Cluff: We could try the "Olympic" case. Mind you, that limitation proceeding is absolutely ineffective until process issues. We have cases here pending; they are set for trial; all issues in the case, including limitation, have been arranged or will be arranged by answer before we get to trial here. That is just a smoke screen. There isn't a single issue on the question of liability in this case, or on the question of liability in this case, or on the question of the damages that cannot be litigated in the cases now pending and urged to trial.

Mr. Montgomery, Sr.: I want to tell your Honor that we are at issue and we are not interested in the limitation.

The Court: I am not going to try one of them unless I can try them all.

Mr. Montgomery, Sr.: We have four cases in ours.

The Court: There is no use to take up the time of the Court to hear the case twice. By the time I have heard it once——

Mr. Cluff: There is nothing on earth to hear twice because the issues are tendered and traversed in this case. The decision of this court will be res judicata of any limitation proceeding or anything else. [992]

Mr. Adams: It won't be unless counsel stipulates to it. If counsel is going to keep that petition for limitation on *trial*, and then after this case is all over, he will try the limitation proceeding. Now, just how does he expect to have the issues in that case determined by the pending action?

Mr. Cluff: I will stipulate with you on that hearing now.

The Court: Isn't it true that under the limitation proceedings the Court is not in any position to pass upon it until it hears evidence and determines whether or not there was personal knowledge there, depending on the nature of the negligence or omissions of the "Olympic II"? And it depends upon the character of those omissions as to whether or not the petition should be granted?

Mr. Adams: That is perfectly true. Counsel is right in this respect: That he has tendered the issue of the limitation by setting it up as a defense to his answer. Nevertheless, the limitation proceedings are still left on file. What is to be done with them eventually? How are they going to be determined by what the Court does with respect to that defense?

Mr. Cluff: Let me ask you this question, Mr. Adams. What conceivable effect can that have upon this proceeding or the effect of a judgment?

Mr. Adams: They could have if a monition were issued. [993]

Mr. Cluff: The monition is not going to be issued because I am not going to ask for it.

Mr. Adams: I am not arguing with you on that

point. You, for the first time, have made the statement in court.

Mr. Cluff: I wrote it to you last week.

Mr. Adams: I might point out, if the Court please, that is part of his written motion on file here. Would you like to see it?

Mr. Cluff: No. I am asking the motion, but I am going to ask the Court to postpone the ruling on it.

The Court: I am going to continue the preliminary matters until 3:45, but I am going to take the matter of the continuance under advisement until I hear more from you on this question of being completely at issue.

Mr. Montgomery, Sr.: Did your Honor notice that Mr. Cluff was going to make the stipulation with Mr. Adams?

The Court: Yes. But I don't know enough about this to know what the offer means. Confession is good for the soul sometimes, but as far as these limitation proceedings are concerned, that is the first one I am having trouble with in following counsel. They talk about having a motion issue. They talked about that three months ago. Now they are talking about it again today, and I don't know, but I feel that, under the general issues, the motion for a continuance on the grounds I have heretofore stated should be denied, without prejudice. And I am going to take this [994] position, that in the course of trial if it develops that some point resolves around the testimony of an individual, and if it then appears more important than it does at this time, that either

an opportunity will be given for the taking of deposition or getting the witness present. How important these witnesses are I can't tell until the case is tried and the evidence is before me, whether it is simply cumulative and what we have in that respect. Certainly if it develops that a trial at this time will result in any unfairness to the N. Y. K. and "Sakito Maru", then the Court is going to consider the matter of continuance in a different light. I feel, however, they should have a full opportunity to be heard. This is a serious matter, a lot of money involved, but I can't help but feel that the testimony as to what transpired to the "Sakito Maru" is exclusively within their knowledge, and that if they had one witness or 50 witnesses there who would testify, there would be no way of contacting them; and the same is true so far as the "Olympic II." The witnesses on the "Sakito Maru" do not know what happened on the "Olympic II," except, as far as I can see at this time, that they did not hear any fog signal.

The other motions, gentlemen, will be continued until 3:45. That you and Mr. Cluff have to fight out with the Court.

Mr. Adams: We have the motions in the death cases, if the Court please. Are they continued to the same time? [995]

The Court: Those are going to have to be submitted. I have not had an opportunity of examining them and I do not know just when I shall. I have another trial tomorrow.



Mr. Adams: I know you do.

The Court: And it will probably take all week. I think if anybody has any authorities that they want to submit in that matter, submit them to me within the next three days and I will try to be able to rule on it as quickly as possible.

Mr. Montgomery, Sr.: Your Honor cannot rule on it until we have the question of fact determined.

Mr. Adams: That is true. There is evidence on the point of the locus of the collision that is furnished by about three or four pages from the deposition or the coast guard officers.

The Court: Didn't I understand that as to the locus of the collision there was no dispute over it?

Mr. Adams: I don't know. Someone said this morning he had some testimony to offer on it. I think a matter of 100 yards or 500 yards, why, that will be inconsequential because it is still within the area that we call our territorial waters of the State of California. We can't get into a serious factual dispute, in other words.

The Court: May I ask if there is any dispute as to whether the Federal or the State death rule applies?

Mr. Montgomery, Sr.: There is. I don't know, myself, yet which rule applies. [996]

Mr. Harnagle: We are not prepared to concede that the Federal rule does not apply, your Honor.

The Court: Mr. Adams, I am not going to pass upon this until we hear evidence on this.

Mr. Adams: If the Court please, we have introduced, or rather, we based our motion upon evidence

to establish the locus of the collision. This is a jurisdictional question we are raising which can be raised, I take it, at any time, and we have evidence here to satisfy your Honor as to the location of the collision. Once that simple point is established, all the rest becomes a matter of law and we are prepared to argue it.

The Court: What difference does it make whether it is decided today or two weeks from today?

Mr. Adams: Well, other than the fact that we have a lot of money posted as collateral on our bonds.

The Court: Yes. But you are asking for a continuance and asking these people to wait for their money. I don't know what difference it makes. I think it is six of one and half a dozen of the other.

Mr. Adams: Of course, if the Court please, I am not prepared to say that they are entitled to get any money. I mean that is what our issue is.

The Court: I know.

Mr. Montgomery, Sr.: We are, we are.

The Court: Of course, that is what we are having this [997] trial about.

Mr. Adams: That is right.

Mr. Harnagle: Answering your question as to what difference, whether it is decided today or two weeks from today, I can't see that it makes much difference.

Mr. Adams: If Mr. Harnagle has \$240,000 that he does not mind letting lie around some place and could not use, that doesn't make any difference, but I will tell you that the N. Y. K., because of this frozen assets order, can use it very well.

Mr. Harnagle: And the whole purpose of the motion is to draw the money away from these libelants.

The Court: If they are not entitled to a bond, of course, there is no argument about that. If they are not entitled to the bond, they are entitled to have it released. I am not going to try that one issue ahead of the trial. If you gentlemen will submit your authorities to me within three days I will try and be able to satisfy myself as to the law. At the time of trial and when we get into the trial and it is determined then that the death statutes of California apply, under such statutes you are entitled to the release.

Mr. Adams: We have submitted our memorandum. If a counsel submits a memorandum within three days may we have another three days to answer their memorandum?

The Court: Yes. [998]

Mr. Adams: We are the moving party.

The Court: Yes. And we will continue the battle between you and Mr. Cluff at 3:45, Mr. Adams.

The gentlemen who did not stipulate and are not present, unless they file a written stipulation within 48 hours I am going to continue those cases.

Mr. Montgomery, Sr.: Who has not stipulated?

Mr. Stearns: Who have not stipulated?

The Court: You gentlemen will have to get that from the Clerk. I have other business to take up, gentlemen.

[Endorsed]: Filed Jun 22, 1942 [999]

TESTIMONY AND PROCEEDINGS  
ON TRIAL

## APPEARANCES:

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derson, Third Party Respondent.

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GLADYS TOWLES ROOT and

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For Intervening Libelants Elwood Johnson and  
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WAYLAND &amp; STEARNS, by

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PHI O. CLOUGH, Esq.,

For Intervening Libelant John Gilbert Mont-  
gomery, by his guardian ad litem, Margerie L.  
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APPEARANCES: (Continued)

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by

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nard McGrath, deceased; Helen McGrath, as  
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CHARLES C. MONTGOMERY, Esq.,

For Intervening Libelants Norma Rubin, Lena  
Karsh, Florence, Lillian and Shirley Rose  
Karsh, by Lena Karsh, their mother and guard-  
ian ad litem; and Lena Karsh, as Administra-  
trix of the Estate of Joseph Karsh, deceased.

H. C. VELPMEN, Esq.,

For Intervening Libelant S. T. Elliott.

## APPEARANCES: (Continued)

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CHARLES E. MILLIKAN, Esq.,  
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FRANK L. STEARNS, Esq., and  
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REAY, SCHARF & REAY, by  
KEIL J. SCHARF, Esq.,  
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R. VIRGIL ALLEN, Esq.,  
For Libelant Lucy Sylvester.

HARVEY R. McKEE, Esq.,  
For Libelant Wilfred Rasmussen.

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Los Angeles, California  
Tuesday, September 16, 1941,  
10 a. m.

The Court: Call the cases and see if everybody is ready.

(Whereupon the clerk called the various cases and noted appearances as set forth herein.)

The Court: We do not want to proceed unless all are represented, and I am going to find out why the gentleman can't be here on time. I want to state to you group who are here, that 10:00 o'clock means 10:00 o'clock, and with this large group we are not going to be very considerate of those who

are late, because we are going to go ahead and if the attorneys cannot be here in time the court may impose whatever fine it may consider necessary to help counsel to attend to the business of the court and of their clients. Here is a libelant not even represented. I am going to ask some counsel who knows him to step into my secretary's office and call his office on the telephone and find out what the trouble is, because if he is not here and they are not going to be represented, I believe the court should dismiss it for want of prosecution.

Mr. Cluff: I will be glad to call him.

The Court: All right; just step right in.

Mr. Adams: If the court please, I may have missed it, but I did not hear a response in these two cases: J. Eldon Anderson and Wilma Greenwood. [2\*]

Mr. Velpmen: For S. T. Elliott is present.

Mr. Purpus: I answered for Wilma Greenwood.

Mr. Adams: Yes, thank you.

I have one or two matters, if the court please, that I do not believe involve Mr. Cluff that we might take up at this time. I have a stipulation here dismissing the amended libel in rem in the case No. 1155, the libel of Lucy Sylvester. There was no jurisdiction obtained of the vessel, and in that action is based upon a claim for wrongful death and is in personam.

The Court: It is purely in personam then?

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\*Page numbering appearing at top of page of original Reporter's Transcript.

Mr. Adams: That is correct. It calls for the order of the court dismissing the libel in rem.

If the court please, within the last week or ten days, I believe it is, there has been a libel filed in personam in behalf of a personal injury claimant by the name of Elliott. Service of citation was made upon an official of the N. Y. K. Line at San Francisco. We, of course, have more time to answer, but we have agreed to put in an appearance and have agreed that the matter might be tried here so that all cases will be tried together.

The Court: Is that 1296?

Mr. Adams: It is 1138, intervening libelant S. G. Elliott. Counsel for Mr. Elliott have agreed that we will not have to put up a cost bond and we have a stipulation to that effect, if the court would be pleased to execute it as [3] an order. Then we also have talked to Mr. Cluff, and I would like to have his statement for the record that, while we are filing an answer to the libel, we have not yet prepared and filed a petition under the 56th rule bringing in Hermosa Amusement Corporation and Captain Anderson. Mr. Cluff has told me prior to the meeting of the court that that would be agreeable. We can file it later or it could be probably the same as in other cases.

I might call on Mr. Cluff now to explain his position on it.

I am talking now about the Elliott matter, our 56th rule procedure in that case.

Mr. Cluff: Oh, I will stipulate with Mr. Adams



that a reply petition or anything he wants to file may be deemed filed, and we will go ahead with the trial; and you give me any pleadings you have in the case within a reasonable time.

Mr. Adams: That is agreeable.

Mr. Cluff: And the issues will be the same, I suppose, as are made in the other cases?

Mr. Adams: Yes.

Mr. Cluff: I will stipulate we may go ahead with the trial of that case, without the formality of serving formal pleadings. I will ask leave to answer that part of it that comes before me, and I will just ask leave to answer it at the time I can get a copy of the complaint. [4]

Mr. Adams: I am offering the answer to the libel to the clerk at this time for filing.

Mr. Cluff: I just got hold of Mr. Reay, Mr. Scharf's partner, he said he had left for court and had one matter in the probate court to attend to, and Mr. Reay said, by all means, for us to go ahead.

The Court: Now, gentlemen, I understand that each side has more or less selected its own generals to direct these matters. I want to know whether we are going to be confronted with each attorney putting in his own objections, or whether the attorneys for the libelants have selected on one or two individuals that will speak for them in going into the question of liability. You all understand that the court at this trial is going to first determine the matter of liability, and after that has been determined there will be further hearings on other matters involved in litigation.

Mr. Montgomery: I may say, speaking for the libelants, that we have selected Mr. Cluff for our spokesman.

The Court: Do I understand that when Mr. Cluff puts in an objection, it will be stipulated that the objection goes to the benefit of all the libelants?

Mr. Stearns: That is true, except that Mayo has sued the Hermosa also. In other words, we would not want to put Mr. Cluff in a bad position, but we have sued him also, and I think two others as well. Otherwise, we are agreeable. [5]

Mr. Cluff: Some of these gentlemen have been good enough to ask me to present the case on the issue of liability as between the two vessels but, as Mr. Stearns pointed out, a number of these people are adverse parties; that is, in all of these cases we have been brought in as third party respondents. So far as the facts and circumstances of the collision are concerned, I will try to carry the ball to the best of my ability.

The Court: As I understand we are going to try at this time, you might say, the two vessels?

Mr. Cluff: I want to put in the best case I can, but I don't want to foreclose anybody by any sins or omissions of mine from supplementing or putting in their own case. I don't want to take that responsibility.

The Court: Everybody will have his day in court, but I don't want, every time an objection is made, eight other lawyers to jump on their feet and put in the same objection.

Mr. Cluff: We had some discussion, during the taking of the depositions, and I think we all agreed that every time an objection was made, we would all avail ourselves of it.

Mr. Adams: I think that was subject to this qualification; that it was open to anybody who did not want to object, to dissent; as it might be, one party would want the evidence for his own purposes, and unless he gets up, and [6] so states, it will be deemed an objection which goes to all—unless he disclaims the objection.

The Court: The court has studied with considerable care the pre-trial statement filed by Mr. Adams, and the one filed by Mr. Cluff, and it seems to me that there should be some preliminary stipulations between you gentlemen, as to certain facts, upon which to approach this litigation. In other words, the place of the collision is not in dispute; I understand there can be no dispute as to the size of the vessel—of each vessel, and the physical facts. That you people can agree upon, and I should think it ought to be stipulated rather than to take up time going over it with a number of witnesses, so that we can get right down to the real matters in controversy.

Mr. Adams: It seems to me these preliminary matters can be stipulated and best handled by an understanding Mr. Cluff and I reached before court opened this morning. So far as we are concerned, these preliminary matters, such as the dimensions of the vessels, and so forth, I will allow Mr. Cluff considerable latitude in asking leading questions, and he

will do likewise with me, and in that way I think we can cover the ground very rapidly, and I think it will take less time than to work out a stipulation.

Mr. Cluff: I agree with Mr. Adams on that.

The Court: Let us proceed.

Mr. Adams: I have one or two preliminary matters, which [7] I haven't had a chance to raise, in connection with Mr. Cluff acting as spokesman for the other libelants, and I would like to have the record show that he will bind the other libelants by any stipulation unless they make objection.

The Court: I understand that a stipulation has been entered into that the others, by their silence, acquiesce, and that stipulation will be deemed the stipulation of all.

Mr. Adams: As I recall, the records in these cases were transferred to this court, but there was no formal order of consolidation made, and I think in the interest of the court's convenience that a final order of consolidation should be made of all these causes, and I so move.

Mr. Cluff: I join in that motion of consolidation except as to limitation proceedings which is not at issue.

Mr. Adams: I think, of course, that it should be retitled.

Mr. Cluff: I move that we use the original title, 1138-B.H.

Mr. Adams: I have no objection.

The Court: It is ordered that they will be consolidated, and for the purpose of convenience, the



action now being tried will be entitled the same, 1138.

Mr. Adams: I wish to have the record show that I have in the court room, and am producing, all the log books of the "Sakito Maru," the recordings, the gyroscope, [8] compass, and working navigation charts of that vessel. They are in the court room, and are produced by N. Y. K.

Mr. Cluff: I take it that no good purpose will be served by an opening statement.

The Court: No; I have reviewed the hundred page pre-trial briefs and that should cover it. [9]

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JOAKIM MARTIN ANDERSON,

called as a witness on behalf of the libelants, being first duly sworn, testified as follows:

Direct Examination

Q. By Mr. Cluff: State your name.

A. Joakim Martin Anderson.

Q. Captain Anderson, you are president of the Hermosa Amusement Company, and were the registered master of the barge "Olympic II"?

A. Yes.

Q. What papers do you hold from the Bureau of Navigation?

A. Unlimited master's papers, any ocean, any tonnage, and first-class pilot, San Francisco Bay.

Q. You have held that ticket how long?

A. 20 years.

Q. The dimensions of the barge "Olympic" I will just run over, and just correct me if I am wrong in any particular. She was built of iron in 1877?

(Testimony of Joakim Martin Anderson.)

A. Yes.

Q. A three-masted sailing vessel originally?

A. Yes.

Q. She was cut down, about 1934, to a barge?

A. Yes.

Q. She was 258 feet long between perpendiculars, and [10] 38 feet beam? A. Yes.

Q. Over-all a little longer, on account of the cruiser bow and the bowsprit? A. Yes.

Q. 22.6 feet deep? A. 22.8.

Q. 1776 gross tons? A. Yes.

Q. 1414 net? A. Yes.

Q. Dead weight 2500 to 3,000 tons? A. Yes.

Q. I want to show you, Captain, two photographs of the barge "Olympic". I will ask if this photograph which appears to show her port side is a substantial representation of the "Olympic" as she was at about the time of this collision?

A. It is, yes.

Q. Except for the people aboard, of course?

A. Yes.

Q. That shows the vessel's port side?

A. Yes.

Q. As she was lying at that time at Redondo?

A. Yes.

Mr. Cluff: I offer this in evidence, and ask that it [11] be marked—in marking the exhibits, may I suggest that we have so many by-named parties as between the "Olympic" and the "Sakito" that we number the exhibits "Olympic" 1 and "Sakito" 1?

Mr. Adams: That will be agreeable.

(Testimony of Joakim Martin Anderson.)

Mr. Cluff: I will offer the photograph in evidence as "Olympic" 1; the photograph showing the port side.

The Clerk: That is "Olympic" 1.

Q. By Mr. Cluff: It has already been marked in evidence before the Commissioner. I show you another photograph, Captain, showing the same vessel, showing the port bow and the port side.

A. Yes, sir.

Mr. Cluff: I will ask that this be marked "Olympic" 2.

Q. Captain, I am showing you a blueprint, showing the deck plan and profile of a vessel, which I have already shown to Mr. Adams, and I will ask you what that blueprint represents?

A. That blueprint was made for the benefit of the United States local inspectors in San Pedro, in '39, whereby they wanted to know——

Q. Never mind. It was made for them?

A. Yes.

Q. Made by whom?

A. The Bell Ship Service, San Pedro.

Q. Is the structure shown in this blueprint the same [12] as the structure of the vessel at the time of the collision?      A. Exactly the same.

Q. I notice that the bell is shown in this on the top of the poophouse. Was the bell in that position at the time of the collision?

A. No, we moved it down here to the fore part of the house, where it was more convenient to get to.

Q. At the time of the collision the bell was located where?

(Testimony of Joakim Martin Anderson.)

A. Right here, at the fore part of the house, in the center.

Q. Was it over the keel?           A. Yes.

Q. Fastened to a bracket on the house?

A. Yes.

Q. Will you take this lead pencil and draw a little cross just where the bell was located?

The Court: Mark it A for the purpose of identification.

Mr. Cluff: The witness has drawn a cross at the house at the point marked A. I will offer the blueprint in evidence as "Olympic" 3.

Mr. Adams: I won't object to the blueprint going in from the standpoint of showing what is on the blueprint. Various markings have been identified, but I would like to have a wide latitude in examining the Captain about the blueprint. [13]

Mr. Cluff: I will state this, that the only purpose was to have something to which we could refer from time to time as the Captain is on the stand.

Q. Captain, describe the "Olympic's" bell?

A. The "Olympic's" bell was 14-inch bell.

Q. When you say 14-inch, how do you mean?

A. I mean 14 inches in diameter, made of bell metal, like all other ships' bells.

Q. A regular ship's bell?           A. Yes.

Mr. Adams: I move that the latter portion be stricken, all other ships' bells, as a conclusion of the witness.

The Court: It is his conclusion.



(Testimony of Joakim Martin Anderson.)

Q. By Mr. Cluff: Describe the bell a little more. What was it composed of?

A. The bell has a clapper in it, whereby we ring it in foggy weather while we are at anchor. Also the time on board ship.

Q. How was the bell rung?

A. It was a continuous ring.

Q. I mean by what means did you ring the bell?

A. By a clapper.

Q. Did you reach hold of the iron clapper itself, and ring it?

A. No, we have a bell rope on the clapper.

The Court: It is operated by hand? [14]

A. Yes, your Honor. The bell rope is made fast to the end of the clapper, and you get hold of the bell rope, and ring it continuously, your Honor, for about 5 seconds.

Q. By Mr. Cluff: That bell was 14 inches in diameter? A. Yes.

Q. And was located at the point you located on the blueprint? A. Yes.

Q. Right over the keel? A. Yes.

Q. You were not on board the "Olympic" at the time of the collision? A. No.

Q. Where were you?

A. I was going uptown on ship's business.

Q. Who constituted the crew of the "Olympic" on the morning of the collision?

A. We had a crew of three aboard.

Q. Tell the court who they were, and what their capacities were.

(Testimony of Joakim Martin Anderson.)

A. Mr. Ohiser, he was night watchman; Mr. Culp was the bait boy, and Greenwood the ship's keeper.

Q. In addition to this crew, there was a concessionaire aboard, who had his own staff?

A. Yes. [15]

Q. He was not employed, he nor his staff were employed by the "Olympic"? A. No.

Q. Or by the Hermosa Amusement Company?

A. No.

Q. What was the place of anchorage of the "Olympic" on September 4, 1940?

A. She was three and a half miles southeast by south, a quarter south from the breakwater, magnetic.

Q. That would be between 160 and 162 true?

A. Yes.

Q. And three and a half miles?

A. About three and three-eighths or three and a half.

Q. Is that an estimate or do you know by computation? A. I plotted it off on the chart.

Q. You plotted it yourself? A. Yes.

The Court: I notice the coast guard fixes it as 3.3 miles.

Mr. Cluff: I think the coast guard's figures are pretty close to right.

The Court: I understand the location of this was agreed; that there is a marking there today as to where the wreck was.

Mr. Adams: I am agreeable to accepting the

(Testimony of Joakim Martin Anderson.)

findings of the coast guard as to the location of the barge. [16]

Mr. Cluff: I don't know that I want to stipulate their location is 100 per cent right, because they did not take it until after the collision, after the ship was sunk; and there is no dispute that it was somewhere around three and 3 tenths miles off the break-water.

The Court: If you can't agree, go ahead.

Q. By Mr. Cluff: By what ground tackle was she anchored?

A. Well, she had a 6000-pound anchor, a two-and one-quarter inch chain, and seven shots, which is 630 feet long. She had 300 feet of stern chain, which is one and a quarter, and a 1200-pound anchor.

Q. The first anchor you spoke of was the bow anchor? A. Yes.

Q. The second one the stern anchor?

A. Yes.

Q. What was the purpose of the stern anchor?

A. To keep the ship from swinging, so that the people would not get seasick when they were out fishing.

Q. In what direction was she headed—in what direction was she held headed by the anchors?

A. Headed west.

Q. That was into the generally prevailing swells?

A. Yes.

Q. Did she have any room to move at anchors?

A. We kept the stern pretty tight, but the tide

(Testimony of Joakim Martin Anderson.)

going [17] north and south, she would move about a point each side; that is, two points altogether. [18]

Q. That is, either the stern or bow might move?

A. Yes.

Q. When you refer to a point, you mean the point of the compass, not degree?

A. A point is 11 degrees, and a quarter, 15 minutes.

Q. There were other barges in this area?

A. Yes.

Q. What other barges?

A. The "Point Loma", and the "Rainbow" barge.

Q. When was the "Olympic" anchored?

A. May 9th.

Q. 1940? A. 1940.

Q. At that time were other barges in place?

A. Yes.

Q. When the "Olympic" was fixed at her anchorage, how did the "Point Loma" bear from her?

A. The "Point Loma" was right in line, between the "Olympic" and lighthouse and breakwater.

Q. That is, she was in shore, the "Olympic"?

A. She was inshore.

Q. About abreast, almost bow to bow?

A. Yes.

Q. How about the "Rainbow"?

A. The "Rainbow's" stern was about half a mile or two points, that is, the stern, on the starboard side. [19]



(Testimony of Joakim Martin Anderson.)

Q. On the starboard quarter, two points from the stern? A. Yes.

Q. About half a mile distant? A. Yes.

Q. How was it between the "Point Loma" and the "Olympic"? A. About 1,500 feet, sir.

Q. Captain, this morning at your direction, we marked little drawings designed to show the relative positions of the three barges. The breakwater light is in a direction toward the bottom of the sheet; the "Olympic" is indicated by the shape marked "Olympic"; the "Point Loma" by the shape marked "Point Loma" and the "Rainbow" by the shape marked "Rainbow" Barge. Are those the relative positions, without regard to scale, and the relative sizes of the vessels—but the relative positions of the three barges? A. Yes.

Mr. Adams: Just a minute before the witness answers the question. I understand the diagram is not drawn to scale; it does not purport to show the distance between the barges.

Mr. Cluff: We purposely used models of the same size, and rather distorted distances so that no claim could be made that there was any attempt to draw it to scale.

Mr. Adams: Nor is there any claim as to the correctness of the bearings of the two barges from the "Olympic"; it is only an estimate?

Mr. Cluff: That is approximately a two point bearing; [20] the other two were approximately abreast.

(Testimony of Joakim Martin Anderson.)

Mr. Adams: Have you attempted to lay out the positions of the barges according to the bearings, by using any device?

Mr. Cluff: Just an ordinary protractor.

Mr. Adams: You have used a protractor on this diagram?

Mr. Cluff: We used a protractor, laying out just approximately. Let us do it right now.

Mr. Adams: All I want to find out is what it purports to be.

Mr. Cluff: He has testified that it was a two point bearing, from observation. We will see what sort of a bearing we have got here. That is about a point and a half, back there.

Mr. Adams: Of course, the diagram does show the direction of the lighthouse?

The Witness: Yes, roughly.

Mr. Cluff: The direction of the breakwater light.

This is very rough; it just gives the relative positions in relation to each other.

Mr. Adams: Under those conditions I have no objection.

The Court: It will be admitted in evidence.

The Clerk: "Olympic" No. 4.

S.  
x

Reyl. Clerk  
7-10-17.

Mr. [unclear]  
[unclear]

Exhibit  
[unclear]

J.  
x  
[unclear]

[unclear]

No. 1138-1941  
[unclear]  
4  
SEP 16 1941  
[unclear]

No. 1111-1941  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT  
**FILED**  
JUL 13 1942

PAUL P. O'BRIEN  
CLERK





(Testimony of Joakim Martin Anderson.)

Mr. Cluff: No further questions.

Cross Examination

Q. By Mr. Adams: How long has the Hermosa Amusement Corporation owned the Barge "Olympic"? A. Since 1934—1933. [21]

Q. How long have you been president of that corporation?

A. 16 years—15 years and a half.

Q. It acquired the "Olympic", then, after you became president?

A. Yes, sir.

Q. How long have you been master of the "Olympic" since the acquisition by the Hermosa?

A. Most of the time.

Q. Now, Captain, referring to this blueprint—I forget the exhibit number.

Mr. Cluff: 3, I think.

Q. By Mr. Adams: Will you tell us if there are any bulkheads—if there were any bulkheads in the "Olympic" lower hold?

Mr. Cluff: Just a minute. To which we object upon the ground it is not proper examination.

A. There is a bulkhead here.

The Court: I think it is proper. You introduced these plans and he said that they covered that vessel. I think he can go into any details of construction.

Mr. Cluff: Very well.

A. There is a bulkhead here.

Mr. Adams: Let the record show the witness is

(Testimony of Joakim Martin Anderson.)

indicating a perpendicular line which is nearest to the bow of the stem of the "Olympic".

Q. How far abaft of the stem of the "Olympic" is that [22] bulkhead?

A. Approximately 20 feet.

Q. Is there any other bulkhead from that one 20 feet abaft the stem, clear to the stern of the ship?

A. There is an iron one, but it is not watertight.

Q. And where was that wooden bulkhead located? A. Right here.

Q. Does that extend from the keel of the ship clear to the top of the under deck?

A. No, sir; that is just in the tween deck. The lower hold was full of sand.

Q. Then, there is no other watertight bulkhead from the forward bulkhead, 20 feet abaft the stem, clear to the stern of the ship? A. No, sir.

Q. And there was none at the time of the collision? A. No, sir.

Q. Now, you spoke about sand. Where was this sand located, Captain?

Mr. Montgomery: I think, your Honor, that there should be an objection to any testimony of this character with respect to bulkheads, and this, that and the other thing, as not having any materiality with respect to the interveners.

Mr. Adams: If the court please, it does have materiality with respect to the interveners. [23]

The Court: I am going to admit it, subject to a motion to strike by interveners. They can mention

(Testimony of Joakim Martin Anderson.)

it and we will discuss that matter later, and I want to get the facts out here, gentlemen.

Mr. Adams: Will the reporter read the pending question?

(Question read by the reporter.)

Mr. Montgomery: May we have that same objection with respect to the sand?

The Court: Yes; the same objection and same ruling.

Mr. Adams: Will you answer that question, Captain? Where was the sand?

A. No. 1 hatch and the main hatch, and then she was leveled off underneath the tween decks; and then we had a few cement blocks on top of the sand there to keep it solid.

Q. In this open hold you had 1,500 tons of ballast, did you not?

A. Yes, sir; approximately that much.

Q. And that ballast consisted of this sand and gravel spread clear from this bulkhead, or did it go forward of the bulkhead?

A. No; it didn't. No; it didn't go any further than the foremast, just in here, had nothing here.

Q. In other words, from the foremast clear to the stern?

A. Not all the way down; to about here.

Mr. Adams: And the witness was indicating a point somewhere between the—— [24]

Mr. Cluff: The after end of the tank, the water ballast tank.

Q. By Mr. Adams: Oh, right here. Is that

(Testimony of Joakim Martin Anderson.)

correct, Captain, the after end of the water ballast tank? A. Yes, sir.

Q. Now, you spoke of cement blocks. You had some cement blocks in addition to the sand and gravel, did you not?

A. Just a few on top to keep the sand down.

Q. About how many did you have?

A. Oh, about a half a dozen, I presume.

Q. They weighed about how much? About a ton each, was it?

A. Well, somewheres along there.

Q. By the Court: Is that in addition to the 1,500 tons?

A. Yes, your Honor. That was just a few blocks on top.

Q. I know, but you had about 1,500 tons of sand, and then in addition to that you had these blocks of concrete or cement? A. Yes, sir, your Honor.

Q. By Mr. Adams: How much did you say all those blocks of concrete weighed?

A. Well, they were various sizes, you know. They were running from——

Q. What is your estimate of the total weight of these concrete blocks? [25]

A. Oh, it wouldn't be more than 10 tons for the lot, and that would be high.

Q. Now, Captain, will you give us the height above the surface of the main deck of the various masts of the "Olympic" as they stood at the time of the collision?

A. You mean from the deck up to the mast?



(Testimony of Joakim Martin Anderson.)

Q. Yes.

A. About 60 feet.

Q. That is the forward mast?

The Court: 60? A. Yes, sir.

Q. By Mr. Adams: The forward mast?

A. They were all about in the same line.

Q. They were all about in the same line?

A. They were all cut off at the cap backstays.

Q. On this blueprint which we are looking at, "Olympic" 3, I believe——

A. "II".

Mr. Adams: It is the "Olympic" 3.

Mr. Cluff: No; only two of them.

Mr. Adams: There are two figures.

Mr. Cluff: Oh, the exhibit, yes, is 3, the Exhibit 3. I thought you meant the "Olympic II", the "Olympic" second.

Mr. Adams: Oh, no.

Q. What is the blue crayon—I take it that is what it is on this blueprint—what is that supposed to indicate [26] there?

A. That is the water line.

Q. It indicates the water line, that lower edge of that blue crayon?

A. Yes, sir; this is the water line here.

Mr. Cluff: You indicated the lower edge of the top section? A. Yes, sir.

Q. By Mr. Adams: Did you have any propulsion machinery in the "Olympic" at the time of the collision? A. Propelling machinery?

Q. Yes. A. No, sir.

(Testimony of Joakim Martin Anderson.)

Q. By the Court: Have you ever had?

A. No, your Honor; never had. She was a sailing ship.

Q. By Mr. Adams: And you said she was built in 1877?

A. In Belfast, Ireland, of iron.

Q. Of iron? A. It was a good ship.

Mr. Adams: Well, I move that portion be stricken.

The Court: Oh, I don't think so. I think a man has a right to say that he has got a good ship.

Q. By Mr. Adams: Did I understand you to say she was a good ship, is that it?

A. She is. She was the best ship on the coast, barring none. She would outlast any ship that they build, even [27] nowadays.

Mr. Adams: I think that portion, at least, ought to be stricken, if the court please.

Mr. Cluff: You asked for it.

The Court: Well, gentlemen, that does not establish liability or non-liability one way or the other.

Mr. Adams: I realize that every master is entitled to think his ship is a good one.

The Court: Just the same as you lawyers are each entitled to think you have got a good case.

Q. By Mr. Adams: What was the capacity of that water ballast tank, Captain?

A. The fresh water tank you are referring to, I presume?

Q. Well, that was the water ballast tank that

(Testimony of Joakim Martin Anderson.)

we referred to when we were trying to measure the distance that the ballast extended aft, do you remember that, from the blueprint?

Mr. Cluff: Just show him that blueprint.

A. There were two 30,000 gallons. Is that what you are trying to——

Q. By Mr. Adams: I am referring to this tank here. A. Yes.

Q. Shown in the lower drawing on this blueprint? A. Yes.

Q. 97 tons, is that the capacity?

A. That is what he figured out. They are two 30,000- [28] gallon tanks, I think, or maybe a little less. I never did measure that and we never fooled with them.

Q. One on each side of the ship?

A. Yes, sir.

Q. Did you keep water in them?

A. Yes; we had standby water there.

Q. Was the water in them at the time of the collision?

A. Yes, sir; there was some in there, not——

Q. Fresh water?

A. Fresh water, yes. We never used that for no water ballast.

Q. Do you know how much water you had in those tanks at that time?

A. The only recollection I got about the tank is that the man that measured them, he says, you got that much capacity in the tanks. This man here that drew this chart, your Honor.

(Testimony of Joakim Martin Anderson.)

Q. Do you take soundings on this tank from time to time to ascertain the water in the tanks?

A. No; we never bothered with them. We leave them there and I go down once in awhile and check up on it. Oh, occasionally we would run a sounding rod down there to find out if everything was all right.

Q. At the time of the collision how much fresh water do you think was in those two tanks?

A. Oh, I should judge it should be about three-quarters [29] full.

Q. And that would be approximately how many gallons or how many tons? Can you give us the measure of it?

A. No; I couldn't figure that.

Q. Does each tank hold 97 tons?

A. No. That is the total amount, I presume.

Q. Of the two tanks? A. Yes, sir.

Q. Well, do you know for certain?

A. No, sir; I don't. But two—I think the tanks, your Honor, were 30,000 gallons apiece; but he says they wasn't that big, but that is what the packers told me at the time we bought the ship.

Q. Are there any other details about this blueprint that you do not agree with? A. No.

Mr. Cluff: I object to the question. I don't think he has said he didn't agree with it.

Mr. Adams: He said that this man told him this——

The Court: I know, but he says he did not measure it. He says he never measured it, but he understood it was a 30,000-gallon capacity.



(Testimony of Joakim Martin Anderson.)

Q. By Mr. Adams: Which do you think is correct, your understanding of it or what this——

The Court: Maybe there isn't any difference.

Mr. Adams: Well, this shows, if the court please, two [30] 11,520-gallon water ballast tanks, 97 tons.

Q. Do you think that that is the approximate capacity of those tanks?

A. Well, I paid that man to go out and measure those for United States local inspectors; and I have never measured the tanks, myself, Mr. Adams.

Q. All right. You think they were about three-quarters full?

A. Something like that.

Mr. Adams: Now, we had, I believe, if the court please, a certificate introduced before Commissioner Head in a hearing in the limitation proceedings in this case which has already been introduced.

Mr. Cluff: The limitation proceedings are right there on the clerk's desk. There is an envelope in there containing the exhibits.

Mr. Adams: I have in my hand what purports to be a copy of the Consolidated Certificate of Enrollment License of the "Olympic", which was issued at San Francisco on April the 11th, 1934. May it be stipulated, Mr. Cluff, that this is the copy of the certificate issued by the Custom-house?

Mr. Cluff: Yes. I have stipulated that with you already.

Mr. Adams: I offer this in evidence.

The Clerk: How do you want your exhibits marked? [31]

Mr. Adams: "Sakito" A.

(Testimony of Joakim Martin Anderson.)

## SAKITO EXHIBIT A

## THE UNITED STATES OF AMERICA

Department of Commerce

Bureau of Navigation

Cat. No. 1342—1917

## BILL OF SALE OF ENROLLED VESSEL

(Secs. 4170, 4171, 4192, 4193, 4194, 4196, and 4312,  
Revised Statutes, and Arts. 57 and 61, Customs  
Regulations of 1923.)

To all to whom these Presents shall come, Greeting:

Know Ye, That \* \* \* \* \*

of the.....or vessel called the.....  
of the burden of.....tons, or thereabouts,  
for and in consideration of the sum of.....  
dollars, lawful money of the United States of  
America, to.....in hand paid, before the seal-  
ing and delivery of these presents, by† \* \*  
the receipt whereof.....do hereby acknowledge  
and.....therewith fully satisfied, contented, and  
paid, have bargained and sold, and by these presents  
do bargain and sell, unto the said† \* \* \*

\*Here insert the name and address of each vendor, and the part conveyed by him.

†Here insert the name and address of each vendee, and the part conveyed to him.

(Testimony of Joakim Martin Anderson.)

Sakito Exhibit A—(Continued)

heirs, executors, administrators, and assigns, . . . . .  
of the said . . . . . or vessel, together with . . . . .  
the masts, bowsprit, sails, boats, anchors, cables,  
tackle, furniture, and all other necessities there-  
unto appertaining and belonging; the latest Con-  
solidated Certificate of Enrollment and License of  
which said . . . . . or vessel is as follows, viz:

A True Copy of the Latest Consolidated Certificate  
of Enrollment and License

THE UNITED STATES OF AMERICA

Department of Commerce

Bureau of Navigation

---

Permanent or temporary—Permanent Certificate  
No. 239

Official No. 116975. Letters K. N. Y. W.

Measured: . . . . ., 1..; Rebuilt at . . . . ., 1..;  
Remeasured: . . . . ., 1..

Service: O. Passenger; Number of Crew, 7.

Consolidated Certificate of Enrollment and License

(Sections 4319 and 4321, Rev. Stats., and  
Act of April 24, 1906)

---

In Conformity to Title L, "Regulation of Vessels  
in Domestic Commerce," of the Revised Statutes of  
the United States, S. Laz. Lansbrugh of S. F., State  
of Cal., Vice President, having taken and sub-  
scribed the oath . . . . . required by law, and hav-

(Testimony of Joakim Martin Anderson.)

Sakito Exhibit A—(Continued)

ing sworn . . . . . that Hermosa Amusement Corporation, a corporation organized and existing under the laws of the State of Calif., and having its principal place of business at San Francisco (Mills Bldg.) State aforesaid is a

This document surrendered at S. F., Oct. 3, 1940 on account of Vessel sunk—Total Loss. Collided with Jap. M/S, Sakito Maru Sept. 4, 1940, 31½ miles off San Pedro light house—7 lives lost and 1 in dispute.

citizen of the United States and the sole owner of the vessel called the Olympic II, of San Francisco and that the said vessel was built in the year 1877, at Belfast, Ire., of Iron as appears by P. R. No. 115 issued at this port Feb. 23, 1933, Now surrendered, Property changed, Service changed from O. Fishing, Rig changed from ships, name changed from Star of France, authority B/N Telegram dated Mar. 29, 1934, Trade changed, and said Register and Paul Hilman, Notary Public, County of Marin, State California, having certified that the said vessel is a Ship, now a barge; that she has two decks, three masts, a figure head, and a round stern; that her register length is 258 feet, her register breadth 38 feet, her register depth 22.8 feet, her height . . . . feet; that she measures as follows:



(Testimony of Joakim Martin Anderson.)

Sakito Exhibit A—(Continued)

	Tons	100ths
Capacity under tonnage deck.....	1487	22
Capacity between decks above tonnage deck..		
Capacity of inclosures on the upper deck, viz:		
Forecastle....; bridge....; poop....; break....;		
houses—round...., side...., chart...., radio....;		
excess hatchways....; light and air....; 279		50
Gross Tonnage .....	1766	72
Deductions under Section 4153, Revised		
Statutes, as amended:		
Crew space.....	156.80	
Masters cabin .....	35.14	191.94
Anchor gear .....	14.45	
Boatswain stores .....	10.63	25.06
Donkey engine and boiler.....	21.34	21.34
Propelling power (actual space,		
.....), .....	13.90	252 24
Net Tonnage .....	1514	

The following-described spaces, and no others, have been omitted, viz: Forepeak...., aftpeak...., open forecastle...., open bridge...., open poop...., open shelter-deck...., anchor gear...., steering gear...., donkey engine and boiler...., other machinery spaces...., light and air space over propelling machinery...., companions...., skylights...., wheelhouse...., galley...., condenser...., water-closets...., cabins....

and the said.....having agreed to the description and measurement above specified, the said vessel has been duly Enrolled at this Port;

License

And J. H. Madden, the master, having sworn that he is a citizen of the United States, that this license shall not be used for any other vessel, or for any other employment than is herein specified, or in any trade or business whereby the revenue of the United States may be defrauded:

License is hereby granted for the said vessel to

(Testimony of Joakim Martin Anderson.)

Sakito Exhibit A—(Continued)

be employed in carrying on the Coasting Trade  
 .....for One Year from the date hereof, and no  
 longer.

Given under my hand and seal, at the Port of  
 S.F.-Oakland, in the District of San Francisco, this  
 11th day of April, in the year one thousand nine  
 hundred and Thirty-four (1934).

11—1416

.....  
 Comptroller of Customs.

A. H. CLIFFORD,

Deputy Collector of Customs.

[Endorsed]: Filed Sep. 16, 1941.

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Mr. Cluff: Mr. Wire, you might make a mem-  
 orandum there that three exhibits out of this limi-  
 tation file have been withdrawn and put in evi-  
 dence in this case.

The Court: Proceed, gentlemen.

Mr. Adams: I am just waiting for the exhibit  
 to be marked.

Q. Referring to "Sakito" A Exhibit, and par-  
 ticularly to the portion of the exhibit that contains  
 a description of the "Olympic II", will you read  
 that, Captain, and tell us if the dimensions shown  
 on there are substantially correct?

Mr. Cluff: Which dimensions are you referring  
 to?

(Testimony of Joakim Martin Anderson.)

Mr. Adams: I am referring to all of the dimensions of the "Olympic".

A. No. This is not according to the book.

Q. Which are you speaking of as not in accordance with the book?

A. The gross tonnage is correct, the length is—the net tonnage 1,544, but this must be the over-all length of 270.

Mr. Cluff: That is not length, that is the tonnage.

A. No; I mean above that. 279—

Mr. Cluff: That is the over-all length.

A. That must be the over-all length.

Q. By Mr. Adams: That is your over-all, then, 279.50, is that correct? [32]      A. Yes.

Q. Then, these dimensions as shown here are correct?

A. Well, I haven't got all those figures in my head; but the net tonnage is correct, the gross tonnage is correct, and 279 feet must be the length over all, which I never did really measure.

Q. Is the figure shown for capacity under "Tonnage-deck" correct?

A. No. I have never measured that.

Q. Are these figures shown with respect to the deductions correct?

A. No; I have never measured that out.

Q. Well, so far as you know they are not incorrect?

A. So far as I know they are not incorrect, as far as I know.

(Testimony of Joakim Martin Anderson.)

Q. What other fog-signaling devices, if any, did you have aboard the "Olympic" at the time of the collision in addition to the bell that you speak of?

A. What other fog signals?

Q. Fog-signaling devices did you have aboard the "Olympic" other than the bell that you spoke of?

A. We had a fog horn but we never used that when we were at anchor.

Q. How was that manipulated?

A. That is a mechanical fog horn that we——

Q. What is the power that causes it to sound?

[33]

A. Well, there is—you just pump it, you know, back and forth with a lever and the sound comes out of the horn.

Q. Was that in working order?

A. Oh, yes.

Q. You never used it, though?

A. No. We have no occasion to use it while we are laying at anchor.

Q. Where is it located there?

A. Aft in the pilot house.

Q. Your fog horn has never been used after May the 9th, then?

A. No occasions to use the fog horn.

Q. On what occasions would you use the fog horn?

Mr. Cluff: "No occasion to use the fog horn," he said.

A. No occasion to use the fog horn.



(Testimony of Joakim Martin Anderson.)

Mr. Adams: Oh, I beg your pardon.

Q. What was the make of this bell that you had aboard the "Olympic"?

A. The bell metal?

Q. No. I mean the manufacture. Do you know the trade name of the bell?

A. No; I don't. I don't know.

Q. Was there any particular type of bell that this bell fits into? Can you give us a description of the type of bell other than what you have?

A. Just an ordinary ship's bell. [34]

Q. What lifeboats, if any, were there aboard the "Olympic"?

A. We had one 22-foot lifeboat.

Q. What was the capacity of that lifeboat?

A. 20 people.

Q. And where was that located?

A. On top of the after house.

Q. Did you have davits in which the lifeboat hung so that the lifeboat could be launched by means of the davits?

A. No. We had the boom and that was approved by United States local inspector.

Mr. Adams: I move that the latter part be stricken as a conclusion.

The Court: That may be stricken. Just describe what you had.

A. We had a boom, your Honor, a 36-foot boom. We had a double tackle attached to the boat and the line to a double-action winch to launch the lifeboat.

(Testimony of Joakim Martin Anderson.)

Q. By Mr. Adams: What power did you use to run the winch? A. Hand power.

Q. Hand power. How many men did it take to operate the winch? A. One.

Q. How many men did it take to operate or launch the lifeboat? [35]

A. Two men launched it. We generally have three.

Q. How long did it take to launch that lifeboat, launch it as it was, with, let us say, three men?

A. About three or four minutes.

Q. As a matter of fact, it took at least five minutes, didn't it, Captain?

A. Oh, we could launch it in four minutes. We only have to raise it about 14 inches up with the block and swung it out. That is all the distance you had to rise her.

Q. That lifeboat had never been lowered into the water after you anchored the "Olympic" out there on May 9th, had it?

A. Not only that, but let me explain, it was always out in the spring and I had it overhauled.

Q. You had it overhauled before you went out to anchor on May 9th; but it had not been launched or lowered by means of this boom since you were anchored on May 9th, had it?

A. No; not that boat.

Q. You had had no boat drill since the "Olympic" anchored out there on May 9th, had you?

A. No.

(Testimony of Joakim Martin Anderson.)

Q. That lifeboat carried 20 persons, is that correct?

A. Approximate 20. I don't remember.

Q. How many persons were there aboard the "Olympic" at the time of the collision? [36]

Mr. Cluff: If you know.

A. I don't know.

Q. By Mr. Adams: Did you ever take any bearings with respect to the position of the "Olympic" after she anchored at Horseshoe Kelp on May 9th?

A. I did. I took a bearing of the lighthouse on the breakwater.

Q. 1 point bearing?

A. 1 point bearing, that is all.

Q. When was that taken?

A. Oh, just after we got there and anchored. That is the first thing I did, to get the course in. The "Point Loma" was not in that particular place at the time so I got a good bearing on that.

Q. You never took any cross bearings, then, after you anchored there on May 9th?

A. No.

Q. Is that correct? Your estimate of the location of the barge is based solely upon this 1 point bearing that you took, is that it?

A. 1 point bearing and the depth of the water.

Q. How did you ascertain the depth of water?

A. By measuring with a deep sea lead.

Q. How many times did you do that?

(Testimony of Joakim Martin Anderson.)

A. About three times.

Q. And those are the two factors that you considered in [37] locating the position of the barge?

A. Yes, sir.

Q. Now, what was the direction of the axis of the "Olympic" or her heading as she lay anchored there to Horseshoe Kelp after May 9th? Can you give that to us in true degrees?

A. I don't know what you—what you say?

Q. I am trying to ascertain the direction of the heading of the "Olympic" as she lay at anchor after May 9th.

A. She was heading west, approximately, all the time.

Q. Was that due west? A. Yes, sir.

Q. What is your estimate based upon of the distance between the "Olympic" and the "Point Loma"?

A. By sea experience.

Q. Well, what sea experience led you to estimate that distance between the "Point Loma" and the "Olympic"?

A. Well, I have been anchoring ships for about 14 years, and I after that—

The Court: Gentlemen, I think this argument between the third or sixth of a mile that you have here, three and one-half and three and one-third, I am not going to listen to a lot of estimates on that when you have actual measurements that you can go by. I think it is unfair to take up the time of the



(Testimony of Joakim Martin Anderson.)

court with this argument between you as to one hundred or two hundred yards, one way or the other, as to the [38] location of it.

Mr. Adams: I might state—the court, of course, can't anticipate what the evidence is—but the distance away of the barge is somewhat important because the testimony will show that the bell was rung, depending upon whether the other barges could be sighted or not; in other words, the distance of the barges from the "Olympic" somewhat was the guage used to go by.

The Court: That may be all right, the distance between the boats there. But whether this is 3.3 from Point Loma or three and one-half miles, why argue about it?

Mr. Adams: Oh, no; I am not arguing about that. I am trying to ascertain how he estimated the distance between the "Olympic" and the "Point Loma", the two barges.

The Court: Oh, that is what you mean.

Mr. Adams: Yes.

The Court: All right.

Q. By Mr. Adams: Now, can you tell us how you arrived at this estimate of the distance that you give between the "Olympic" and the barge "Point Loma"?

A. While we were at anchor at Redondo we had about three or four, or sometimes five, barges in there and we were anchored in rows; and that is how I knew my distance when I got in there,

(Testimony of Joakim Martin Anderson.)

approximate distance of about 1,500 feet from the "Point Loma", I should judge we were.

Q. Well, it was just an estimate that you made by that [39] observation and your sight, isn't that correct? A. Yes, sir.

Q. And the same is true——

Q. By the Court: In other words, your judgment? A. Yes, your Honor.

Q. By Mr. Adams: And the same is true of the distance between the "Olympic" and the barge "Rainbow", as estimated by you, is that correct?

A. It is.

Q. How much chain did you say you had out on your bow mooring?

A. Seven shots, 630 feet to the hawse-pipe.

Q. Did you have a buoy there in addition to the anchor?

A. On the stern anchor.

Q. Only? A. Only.

Q. What was the chain you had out on the stern anchor?

A. One and one-quarter-inch.

Q. What was the length of it?

A. 300 feet.

Q. Does that cover the length of the chain from the stern of the "Olympic" clear down to the weight at the bottom, or does that only run from the stern of the "Olympic" to the mooring buoy?

A. The chain is made fast to the anchor and then the buoy is made fast to the crown of the

(Testimony of Joakim Martin Anderson.)

anchor, so in case of [40] the ship swings around in any water, we take up the buoy and we swing the ship around heading west again to be against the swell.

Q. Thank you very kindly, Captain. In other words, you had a chain running direct from the stern of the "Olympic" to the anchor?

A. That is right.

Q. And then you had another chain running from the anchor to the buoy?

A. That is right.

Q. All right. Then your chain from the stern of the "Olympic" to the anchor was the distance or the length that you just gave, is that correct?

A. Yes, sir.

Q. That is the answer, thank you. Now, do you know whether any of these moorings were severed by the collision?

Mr. Cluff: If you know?

A. I don't know.

Q. By Mr. Adams: Did you receive any report from a diver concerning that feature?

The Court: I think that is hearsay, isn't it?

Mr. Adams: If the court please, I think, of course, if the diver is going to be here to report on it, why, maybe that would be the best evidence; but if a diver was sent down to make a report to the master of the ship, I think there is an exception to the hearsay rule in this case. [41]

Mr. Cluff: If you want a stipulation, I will stip-

(Testimony of Joakim Martin Anderson.)

ulate the chain to the stern anchor was broken, and the port anchors were intact. That is our information.

Mr. Adams: I am in the position of not having any information. That is why I am asking the question.

The Court: Go ahead and ask. It is easier to let you go than to argue.

Q. By Mr. Adams: Do you know whether the chains——

A. As I came out there at the time that the diver went down to look for something, and I saw the buoy was there, so I presumed that the stern chain had parted; but the bow chains, I was informed, was all right.

Q. That the bow chains——

A. The bow chains was O. K.

Q. Were you informed by the diver that the stern chain had been severed? A. Yes.

The Court: Now, I did not understand it that way. I understood he said it was intact. Which was it?

A. It was broke, your Honor.

The Court: All right.

A. That is the stern chain only.

The Court: Oh.

A. It was the bow chain that was intact.

Mr. Cluff: May I suggest a clarification there? There were two chains, Captain, one leading from the anchor to the [42] buoy and the other leading



(Testimony of Joakim Martin Anderson.)

from the anchor to the ship. The one leading from the anchor to the ship was broken and the one leading from the anchor to the buoy was intact?

A. That is right.

Mr. Cluff: That was the situation.

Q. By Mr. Adams: Now, you named the three crew members of the "Olympic". State whether or not any of those crew members had a certificate as to operation of a lifeboat; in other words, had a lifeboat certificate.

Mr. Montgomery: Objected to on behalf of the interveners. We have not interposed objections as we went along, but we object to any evidence with respect to these matters which might possibly show some contributory negligence on the part of the "Olympic" as not being attributable to the interveners.

The Court: Overruled. You may proceed.

Mr. Cluff: I am going to make an objection on the grounds it is not proper cross examination. It has no bearing.

The Court: Gentlemen, you are going to have to go into this sooner or later. Why not go into it and have it? We are going to get the cards out here. You are going to have to put the cards on the table before you get through.

Mr. Adams: That may be true. I am going to ask qualifications, that is all.

The Court: Go ahead.

Mr. Adams: Will you answer the question, please, Captain? [43]

(Testimony of Joakim Martin Anderson.)

A. The name of the crew?

Q. No. I will ask the Captain again. Did any of the three members of the crew that you named have a lifeboat certificate? A. I don't know.

Q. Well, the answer is that the knowledge that you have, they did not, isn't that correct?

The Court: He said he didn't know.

A. I didn't know.

Q. By Mr. Adams: You never inquired?

A. No; I never did.

Q. Now, do you know whether any of them held any license or certificate issued by the Bureau of Marine Inspection and Navigation?

A. Yes; Mr. Ohiser.

Q. And what did he have?

A. I don't know. I know he has got something.

Q. Did you ever inquire before you hired him?

A. No.

Q. Did you ever inquire before the collision as to what license he might hold?

A. No; I never did.

Q. You didn't know until after the collision. Greenwood you spoke of as being the shipkeeper.

The Court: The what?

Q. By Mr. Adams: Is that the title you gave to Greenwood? [44]

The Court: I didn't get that term. What did you say?

Mr. Adams: Shipkeeper.

(Testimony of Joakim Martin Anderson.)

A. That is the same as barge master. When I was away he was in charge out there.

Q. I see. Now, tell us what were the duties of these three crew members, beginning with Ohiser, please.

A. He was the night watchman.

Q. What were his duties?

A. His duties were to keep a good lookout at night time and ring the bell when it was foggy. Greenwood, he was looking after the engines, getting the pumps started in the morning; and the boy, he was taking care of the bait and giving service to the people on board the ship.

Q. Now, at the time of the collision did the "Olympic" have any certificate whatsoever?

Mr. Cluff: What do you mean by "a certificate"?

Mr. Adams: Well, a certificate issued by either the Custom-house or the Bureau of Marine Inspection and Navigation.

A. The inspection certificate you are referring to?

Q. Yes.

A. The inspection certificate we didn't have.

Q. That was picked up in 1938, wasn't it?

A. That is right. But let me explain about that.

The Court: Just answer the questions.

Mr. Adams: Just a minute. I just want that question [45] answered.

A. Yes, sir.

(Testimony of Joakim Martin Anderson.)

Q. That it was picked up in 1938?

A. Yes, sir.

Mr. Adams: Now, Mr. Cluff, I have asked you before this trial to produce the original of the specifications issued by the Bureau of Marine Inspection and Navigation.

Mr. Cluff: I did have it last night. I didn't expect that you would go into it today. Apparently I did not bring that file here this morning. I meant to but did not. I will have them here this afternoon. [46]

Mr. Adams: I also have a copy. Would you care to examine it? I think it is the same, only mimeographed.

Mr. Cluff: So far as I know, that is the same thing. Are you prepared to say it is the same as the one we got?

Mr. Adams: Yes; so far as I know it is.

Mr. Cluff: Well, do you know?

Mr. Adams: I haven't seen yours.

The Court: You can compare it afterwards, gentlemen, and if there are any corrections, why, you can make them.

Mr. Cluff: So far as I know, that is a copy of the letter and also the mimeographed sheets.

Mr. Adams: This is another copy that was mimeographed. I had some notations on that one.

Q. Captain Anderson, I show you a copy of a letter addressed to you under date of June 3, 1940, by the U. S. Local Inspectors, Edward Stuart and



(Testimony of Joakim Martin Anderson.)

Joseph A. Moody, to which is attached a mimeographed copy of specifications entitled "Inspection and Certification of Non-Self-Propelled Pleasure Vessels" and I ask you if you received that letter on or about the date shown?

A. I did.

Q. Did you also receive the specifications attached to that letter?      A. I did.

Mr. Adams: I offer this in evidence, if the court please. [47]

Mr. Cluff: To which we object upon the ground it is irrelevant, incompetent and immaterial, absolutely no bearing on the issues involved in this collision.

The Court: Gentlemen, I am going to receive it subject to a motion to strike. I appreciate your point and I will be very much interested in having the points of law involved briefed, because that was one of the troubles we had when I was United States Attorney and I am still interested in finding out just what control the federal government has over those pleasure boats.

Mr. Adams: If the court please, we covered that to some extent in our pre-trial brief.

The Court: I appreciate that you did; but as far as the court is concerned, it is an open question and I am going to let all the facts in, gentlemen. I will be pretty liberal in admitting evidence.

Mr. Cluff: Subject to the objection. Then I won't repeat my objection. It is understood this objection runs to all this line of testimony.

(Testimony of Joakim Martin Anderson.)

Mr. Montgomery: May we have a special objection upon the part of the interveners, as not being binding upon them in any way whatsoever?

Mr. Black: In that connection, we wish it understood that so far as libelant Mrs. McGrath is concerned, we do not join in that objection. We think it is material.

Mr. Eastham: I make the objection there is no authority [48] at law for the regulations.

The Court: I told you gentlemen I was going to receive it subject to a motion to strike, and I will give you a chance to show me what the law is on the question. I never could find it out when I was United States Attorney. I never was able to come to any definite conclusion, and maybe you can help me now.

Mr. Montgomery: May we have the date of that letter?

The Clerk: That is Sakito Exhibit B.

Mr. Adams: June 3, 1940.

### SAKITO EXHIBIT B

Copy

M-1270

June 3, 1940

312 Post Office & Customhouse  
San Pedro, California.

Mr. J. M. Anderson

P. O. Box 437, Hermosa Beach, Calif.

My dear Sir:

You are informed that non-self-propelled vessels over one hundred gross tons anchored or moored

(Testimony of Joakim Martin Anderson.)

Sakito Exhibit B—(Continued)

on the seas or on waters connected therewith, that are not protected from the hazards of the sea, which are patronized by the public for pleasure purposes, are subject to inspection under the provisions of the act of Congress approved on May 28, 1908 and must be certificated as a condition to their operation in such service.

To facilitate the inspection and certification of vessel operated in such service, there is herewith enclosed application form 833, upon which to submit an application to this Board for the inspection and certification of your vessel. There is also submitted an outline of the general requirements which in the opinion of this Board must be complied with in order that non-self-propelled pleasure vessels may be suitable and safe for the purposes in which they are employed.

The operation of your vessel without a valid certificate of inspection on board constitutes a violation of the act of Congress approved on May 28, 1908 and if found operating in such service without inspection and certification, you will be duly reported for the violation of such act.

Yours very truly,  
EDWARD STUART,  
JOSEPH A. MOODY,  
U. S. Local Inspectors.

Enclosure.

(Testimony of Joakim Martin Anderson.)

Sakito Exhibit B—(Continued)

## INSPECTION AND CERTIFICATION OF NON - SELF - PROPELLED PLEASURE VESSELS.

Non-self-propelled vessels over 100 gross tons, anchored or moored on the seas or on waters connected therewith, that are not protected from the hazards of the sea, which are patronized by the public for pleasure purposes, are subject to and shall be inspected and certificated pursuant to the provisions of the act of Congress approved on May 28, 1908. (46 U.S.C. 395, 396, 397, 398.)

The following general provisions constituting minimum requirements shall be followed in the inspection and certification of such vessels:

### Hull

1. The vessel shall be dry-docked for inspection.
2. The structure comprising the keel, stem, stern-frame, keelsons, stringers, frames, beams, decks, bulkheads, ceilings, sheathings, planking, plating, fastenings, etc., including also the frames, beams, plating or planking of superstructures, deck houses, etc., and all holds, bilges, peaks and tanks, shall be thoroughly inspected and necessary tests shall be made to determine actual conditions and suitable repairs, renewals or replacements effected where found necessary.



(Testimony of Joakim Martin Anderson.)

Sakito Exhibit B—(Continued)

3. All sea chests, suction, and all other openings in the hull, shall be opened, examined and placed in suitable condition.

4. A sufficient number of transverse watertight bulkheads shall be fitted so that the vessel will remain afloat with positive stability in the event any one main compartment is flooded.

5. The structural strength of the vessel shall be in all respects sufficient.

6. The rudder, pintles and gudgeons shall be examined and placed in good condition.

7. All spars, rigging and gear shall be placed in a safe condition, or removed if unnecessary.

8. All ventilators and hatches shall be provided with suitable covers.

9. Platforms, stagings and gallery runways rigged outside of the hull shall be of suitable construction and not less than three square feet of deck space shall be allowed for each person; and where enclosed, shall be provided with at least two means of escape.

10. Railings shall be fitted where necessary, which shall be of not less than forty-two inches in height and of rugged construction.

11. An inclining test shall be made by a representative of the Bureau.

12. The name of the vessel shall be on each bow and stern, which shall be not less than six inch letters.

(Testimony of Joakim Martin Anderson.)

Sakito Exhibit B—(Continued)

13. Draft marks shall be checked and cut in.

Hull Equipment

14. All gangways, accommodation ladders and stairways, shall have suitable manropes on each side. All side gangways and ladders shall be of rugged construction. All running gear such as tackles, hooks, shackles, bridles, etc., shall be of suitable dimensions and in good condition.

15. Not less than two bower anchors with suitable chains in good condition shall be on board.

16. Anchor weights and diameter of chains shall comply with the Rules of the A.B.S. for passenger vessels of like tonnage.

17. All anchor chains shall be ranged and shackle pins backed out for inspection.

18. Length of chains shall be five times the depth of water in which the vessel is anchored, but in no case less than provided in the A.B.S. Rules for passenger vessels.

19. Chain lockers shall be clean, adequately drained, and the anchor chains suitably secured.

20. The following signal lights and apparatus shall be on board and available for immediate use.

a. Two anchor lights visible at least two miles, together with one auxiliary set.

b. One set of side lights suitable screened visible at least two miles.

c. Not under command signals consisting of two red lights and two black balls or shapes.

(Testimony of Joakim Martin Anderson.)

Sakito Exhibit B—(Continued)

- d. An efficient fog bell.
- e. Twelve approved self-igniting red distress lights in metal container.
- f. One signal lamp.
- g. One mechanical fog horn.
- h. Basket or other efficient signal for the purpose of indicating the side of the fishing vessel approaching vessels may pass.

22. The following equipment in suitable condition and ready for use shall be on board:

- a. An adequate number of suitable towing hawsers.
- b. Suitable and efficient steering apparatus.
- c. One thirty-fathom lead line and fourteen pound lead.
- d. One efficient steering compass.
- e. Sounding pipes with striking plates fitted to non-accessible compartments.
- f. Adequate frames with glass for notices and certificates of this Bureau.
- g. Metal-lined paint and lamp locker fitted with a self-closing flame-tight door.

Accommodations

23. All working and enclosed spaces occupied by persons, shall be provided with at least two means of escape so that at least one will be available in case of emergency.

24. There shall be at least ten square feet of

(Testimony of Joakim Martin Anderson.)

Sakito Exhibit B—(Continued)

deck space available for each person allowed on board.

25. Sanitary toilets shall be provided for males and females in separate suitable enclosures with doors suitably marked. Not less than one toilet shall be provided for each eighteen persons allowed to be on board.

26. A log book shall be kept in which a daily record of the number of persons on board during the day shall be entered.

27. The crew's quarters shall comply with the Seamen's Act.

Machinery

28. All machinery on board, including boilers and unfired pressure vessels, if any, shall conform to Rules I and II of the General Rules and Regulations.

29. Propeller shafts shall be either disconnected from their coupling bolts or removed, and if removed the stern tubes shall be blanked off.

Fire Control and Equipment

30. Spaces containing operating boilers or machinery located below the main deck shall be provided with suitable bulkheads, and if wood, shall be sheathed with insulating material covered with not less than #18 gauge galvanized iron.

31. All woodwork around galley stove, fired pressure vessels, and operating machinery on deck, shall



(Testimony of Joakim Martin Anderson.)

Sakito Exhibit B—(Continued)

be protected with not less than #18 gauge galvanized iron and asbestos.

32. All bilges, holds, compartments, etc., shall be free of all rubbish, waste, oil, etc.

33. The following approved fire detecting and extinguishing installations and equipment shall be on board:

a. An Automatic fire detecting and alarm system which will indicate audibly and register visually at a central station the presence or indication of fire in enclosed spaces.

b. A manual fire alarm system with manually operatable fire alarm boxes located in stairways, enclosures, corridors, public rooms, etc., on vessels with persons on board other than the crew during the nighttime.

c. A general alarm system operated manually from a central station.

d. A sprinkling system covering all spaces below the main deck fitted with fusible link heads connected to fire line with valve (s) on deck and suitably marked.

e. At least two power fire pumps, each of sufficient capacity to provide two powerful streams of water to fire hose outlets. Outlets shall be so located that any part of the vessel can be reached by two streams of water from hoses not more than fifty feet in length. The hose shall not be less than one and one-half inches in diameter. All fire hoses and

(Testimony of Joakim Martin Anderson.)

Sakito Exhibit B—(Continued)

fire lines shall withstand one hundred pounds pressure.

f. Spaces containing operating internal combustion or other type engines including electrical motors, shall be adequately protected from fire, and such number of fixed or portable foam or CO<sup>2</sup> fire extinguishers shall be provided as may be necessary to insure full protection.

g. Properly screened flame arresters on all gasoline engines, and suitable filling pipes and vents, properly screened, on all tanks containing gasoline.

h. A suitable number of portable fire extinguishers so distributed as to be available in any part of the vessel in the event of fire.

i. An adequate number of suitable fire axes.

j. When persons other than crew are on board, an efficient supervised fire patrol shall be maintained at all times covering the entire vessel at not more than twenty minute intervals.

k. A suitable watchmen's clock system.

l. The structures of all non-self-propelled pleasure vessels, for which the first application for inspection as such is made on or after July 1, 1940, shall be of incombustible materials throughout.

Lifesaving Equipment

34. Approved lifeboats with suitable launching arrangements and approved life rafts or buoyant apparatus, shall be carried sufficient to provide ac-

(Testimony of Joakim Martin Anderson.)

Sakito Exhibit B—(Continued)

accommodations for all persons on board. Fifty per cent of such accommodations may be in lifeboats, and fifty per cent may be in life rafts or buoyant apparatus.

35. All lifeboats shall have approved equipment as follows:

Boat Hooks—One boat hood of suitable length, but not less than eight feet long by one and one-half inches in diameter.

Bucket—One galvanized iron bucket with lanyard attached.

Life Line—One life line properly secured the entire length on each side, festooned in bights not longer than three feet with a seine float in each bight.

Life Preservers—Two life preservers in addition to the vessel's complement of life preservers.

Oars—One single banked complement of oars and one steering oar.

Painter—One painter of manila rope not less than two and three-fourths inches in circumference, and of a length not less than three times the distance between the boat deck and the light sea-going draft.

Plugs—Drain holes, fitted with automatic plugs, with two caps for each hole attached by chains.

Rowlocks—Full complement of rowlocks attached to lifeboat by separate chains with spares.

Lantern—One flash or one lantern (containing

(Testimony of Joakim Martin Anderson.)

Sakito Exhibit B—(Continued)

sufficient oil) to burn at least nine hours and ready for immediate use.

36. The following approved installations and equipment for the better security of life shall be on board.

One adult life preserver for every person allowed to be carried; also ten per cent additional for children. Life preservers shall all be stowed in accessible places and stowage suitably marked "Adults' life preservers" or, "Children's life preservers."

b. Suitable number of ring buoys and water lights, one of which on each side shall be provided with fifteen fathoms of fifteen thread manila line attached, all located so as to be readily available for immediate use.

c. A line-carrying gun and equipment auxiliary thereto.

d. Floodlights on both sides of the vessel on vessels with persons on board other than crew during the nighttime.

e. Not less than two power-driven bilge pumps with suitable manifold, and suction from each compartment.

f. Medicine chest.

g. An efficient and suitable ship-to-shore radio telephone is also recommended.

Manning

37. A sufficient complement of licensed officers



(Testimony of Joakim Martin Anderson.)

Sakito Exhibit B—(Continued)

and certificated seamen, including lifeboatmen, shall be carried as may be required to adequately deal with any emergency that may arise; and a licensed deck officer shall be in command of the vessel.

38. Minimum crew while vessel is at anchor with persons other than crew on board:

1 licensed master.

1 licensed engineer.

Sufficient certificated lifeboatmen to adequately launch and man all lifesaving equipment, 65% of which shall be able seamen.

39. Minimum crew while vessel is underway with no persons on board other than crew:

Same as required on other seagoing barges of like tonnage.

General

40. A special survey as provided by Rule IV, Section 14, Ocean and Coastwise Regulations, shall be made.

41. The Local Inspectors shall determine and make such other requirements as in their judgment may be necessary for the safe operation of the vessel.

42. These vessels shall be inspected and certificated under the general provisions of Rules VI and VII of the General Rules and Regulations.

[Endorsed]: Filed Sep. 16, 1941.

(Testimony of Joakim Martin Anderson.)

Q. Referring to Sakito Exhibit B, Captain, and particularly to the mimeographed list of specifications attached thereto——

The Court: As a matter of fact, gentlemen, I think there is a case pending in one of the courts now in trying to establish the law on this very point.

The Witness: Yes, your Honor. That is the old "Okalalla". That has been in for three years.

Mr. Adams: It is my understanding, too, if the court please.

The Court: So I can understand why there is confusion in everybody's mind, including the court's.

Q. By Mr. Adams: I would like to have you refer to the first mimeographed page of that list of specifications if you will, Captain, under the title "Hull", No. 1: "The vessel shall be dry-docked for inspection." Did you ever [49] dry-dock the "Olympic" after the receipt of this letter?

A. No; I didn't; but I had permission not to dry-dock from the supervising inspector.

Mr. Adams: Just a minute. I move that latter portion be stricken, if the court please, as non-responsive and a conclusion of the witness.

Mr. Cluff: I submit the answer should stand.

The Court: You are asking for communications, and if there are any other communications from the department that did not require him to do it, I

(Testimony of Joakim Martin Anderson.)

think it is not any more than fair it be brought out.

Mr. Adams: All right. If there is such a communication, I ask it be produced.

The Court: It may not be in writing. It may be from the inspector in charge.

The Witness: Yes, your Honor; that was the case. We went to San Francisco and saw the supervising inspector, Captain Fisher, and we took it up before him that we had been in dry-dock a few years prior; and he knew the condition of the ship, and being an iron ship we wouldn't have to go to dry-dock.

Q. By Mr. Adams: Did he at that time allow you any other exemptions from this specification and this group of specifications?

Mr. Cluff: That calls for a conclusion of the witness. Let him testify to what was said and done. [50]

A. Well, yes. He also approved my life-saving equipment which he thought was as good as davits, and maybe better. We also told him that under this new regulation, your Honor, we could not operate, as it would cost up to \$50,000, and we were willing to quit right now our business. And Captain Fisher stated, "Well, I don't want to put everybody out of work, so we may be able to work something out when I come to San Pedro." Which he came down at the time of the accident, which they should modify this letter that they had sent to us, as it was impossible for a fishing barge to go under such rules

(Testimony of Joakim Martin Anderson.)

and regulations as the coastwise passenger steamers called for. In other words, we had to have six——

Q. By Mr. Adams: Just a minute. How much of this is what Captain Fisher told you and how much of this is your argument? When did your argument commence in this long line of statement?

I don't know, if the court please.

The Court: Well, gentlemen, is there any dispute of the fact that the department did not enforce these regulations, and gave them all a time to comply with them?

Mr. Adams: Yes; there is a very definite dispute. Captain Fisher informs us that these regulations were in force at the time of the collision, that there was no exemption given. And I would like at this time, in view of the statement of this witness, and the court allowing [51] the evidence to go in, to ask that the deposition of Captain Fisher be taken. I happen to know that Captain Fisher is attending an A Board hearing in Seattle, I believe on Thursday of this week, and it will probably be impossible for him to come down here. I ask now, in view of this testimony in the record, for leave to take his deposition to refute the testimony of this witness just given.

Mr. Cluff: Mr. Adams, would you care to stipulate that the letter that accompanied the report of the A Board was written by Director Roper?——

Mr. Adams: Absolutely not. It has no bearing on this situation, if the court please. It simply ex-



(Testimony of Joakim Martin Anderson.)

pressed that there was a doubt. We know there was a doubt. We will satisfy the court, I am sure, before we are through that we——

Mr. Cluff: I tender you the stipulation that that letter was written by Director Roper.

The Court: Gentlemen, let us not argue the case now. Let us proceed and find out. This may or may not be material, anyhow.

Mr. Adams: Yes.

Q. Let us refer, Captain, now to item No. 2 on that mimeographed list. Were all these items inspected and tested, as set forth in that list? I think you can answer that yes or no, can't you, Captain? [52]

A. No, they were not tested.

Q. With reference to item 4, which is "A sufficient number of transverse water-tight bulkheads shall be fitted so that the vessel will remain afloat with positive stability in the event any one main compartment is flooded." Were any such bulkheads put into the "Olympic", after the receipt of this letter? A. No.

Q. Referring to item 9, "Platforms, stagings and gallery runways rigged outside of the hull shall be of suitable construction." Did it comply with the specifications set forth in that item?

A. Yes, they appeared to be there.

Q. Did those enclosures provide two means of escape?

A. Yes, forward and aft, you could get out of the hold.

(Testimony of Joakim Martin Anderson.)

Q. I am talking about the staging.

A. What staging are you referring to, Mr. Adams?

Q. Stagings on the outside of the hull of the "Olympic"; that is what item No. 9 referred to. Will you read item No. 9, so that you won't be confused, Captain, please?

The Court: I think, Mr. Adams, you are going into a lot of matters here, which I think are quite far astray on the question of cross examination.

Mr. Adams: If the court please, maybe this is a bit [53] outside of the scope, but we are entitled, under the new Supreme Court admiralty rules, to examine the witness in the same manner as in the state court practice, under Section 2055. I would just as soon call him later, but I thought I would get the story now.

Mr. Cluff: We have a number of witnesses here, taken from their work and I would like to get them on.

Mr. Adams: I am right in the middle of this.

The Court: Gentlemen, if there are witnesses here, we should accommodate them, but if one side is going to be hardboiled, the court will be hardboiled about it.

Mr. Adams: If the court thinks that I am going to be hardboiled——

The Court: I think you are going into a lengthy matter, and if there are a number of short witnesses, they should be called.

(Testimony of Joakim Martin Anderson.)

Mr. Cluff: Captain Anderson will be available all the time. He lives here.

Mr. Adams: I ask that he be kept under subpoena.

The Court: He will be ordered to be here all the time.

Mr. Adams: I haven't covered all the items on my cross examination.

The Court: I am not going to shut you off. Proceed; but I am just telling you there is a limit to cross examination, particularly where you have a court room full of witnesses who have been taken away from their work. I [54] don't want to shut you off on anything you consider material.

Mr. Adams: I have about three other items.

The Court: Proceed.

Q. By Mr. Adams: Now, do I understand, Captain Anderson, that you did not operate the concessions on board the "Olympic"?

A. No, sir.

Q. They were operated by Mr. Joseph Karsh?

A. Yes.

Q. Do you know how many people there were in his staff, besides himself?

A. We had him, and a waitress, and then he had his two girls helping him out Saturdays and Sundays.

Q. You operated two shore boats to and from the "Olympic", did you not?           A. I did.

(Testimony of Joakim Martin Anderson.)

Q. Their names were "Lillian L'" and "Grant"?

A. That is right.

Q. Captain Anderson, at the time you anchored the barge "Olympic" at the Horseshoe Kelp on May 9th, you were acquainted with the steamer lanes of vessels entering Los Angeles Harbor from southern ports, and vessels leaving Los Angeles bound for southern ports, were you not?

A. What steamer lanes are you referring to?

Q. I am talking about the regular course of vessels [55] on leaving Los Angeles Harbor, going southbound, to other ports and San Diego—I say, were you familiar with the various courses?

A. No.

Q. Were you familiar with courses coming up from the Canal Zone, entering Los Angeles Harbor?

A. No, sir.

Q. How long have you been a master?

A. 20 years.

Q. Have you ever made that run between Los Angeles Harbor and the Canal?

A. No, I had been on the Australia Line all my life.

Q. You never made that run? A. No.

Q. After you anchored the barge "Olympic" on May 9th, did you ever observe vessels entering and leaving Los Angeles Harbor in the proximity of the "Olympic"? A. I have.

Q. Will you tell us how close those vessels passed by the "Olympic"?



(Testimony of Joakim Martin Anderson.)

A. They passed east of the "Rainbow" barge; all I saw.

Q. You never saw any vessels pass between the "Rainbow" and the "Olympic"? A. No, sir.

Q. You never did? You are sure of that?

A. Yes. [56]

Q. You never saw any vessels pass to the westward of the "Olympic"? A. Yes.

Q. You did? A. Yes.

Q. Rather frequently?

A. No; once in a while.

Q. You saw them pass in both directions, did you, that is, entering and leaving Los Angeles Harbor to the westward of the "Olympic"?

A. No; I told you once in a while. I cannot recollect, but I know there are a lot of ships out there, and they come and go, both pleasure, steam and sail.

Q. Let us confine the question to merchant vessels. What about the merchant vessels, did you see many merchant vessels pass the "Olympic" to the westward, entering and leaving Los Angeles Harbor?

A. No, they were all to the eastward.

Q. Did you ever see any merchant vessels pass the "Olympic" to the westward?

A. I can't recollect right now.

Q. What hours did you stay aboard the "Olympic", as a regular routine matter? Were you there all the time?

(Testimony of Joakim Martin Anderson.)

A. No, I went out during the day, and came back; checked up the cash, and saw that it was put in the bank, and so forth. [57]

Q. How often did you go out, daily?

A. Practically every day.

Q. What time did you usually go out?

A. Any time I felt like going out; sometimes I had other things to look after and couldn't go out. As a general rule, I went out in the morning; sometimes in the afternoon.

Q. About how long would you remain aboard the "Olympic", after you got out there, that is, at various times?

A. Sometimes the whole day, and sometimes just a short time.

Q. Did you, as a custom, spend nights aboard the "Olympic"?

A. When we were moving ship, I was on board all the time.

Q. Confining your answers to after the "Olympic" was moored out there.

A. Not in the night time. I went home to my wife.

Q. You never spent a night out there?

A. Yes, I did spend some nights out there.

Q. Just a few?           A. Just a few.

Q. At the time you anchored the "Olympic" out there, you knew that that particular area was sometimes visited by fog, did you not? [58]

A. Yes, sir.

(Testimony of Joakim Martin Anderson.)

Q. In other words, you had observed fog in that area prior to that time, had you not?

A. Not very often; about, oh, maybe four or five times. That was all the fog we had all summer out there.

Q. I am talking now about what you had observed prior to the time you had anchored the "Olympic" out there; in other words, you had, prior to May 9, observed fog in the area in which you anchored the "Olympic"?

A. No.

Q. You never observed it?

A. No, I was only over a couple of times, and the wind and weather was fine whenever I went over there.

Q. Have you ever navigated between Los Angeles Harbor and Santa Catalina Island?

A. No.

Q. You have never been out between them——

Mr. Cluff: Mr. Adams, I will stipulate that it is very frequently foggy around Los Angeles Harbor.

Mr. Adams: I will accept the stipulation.

Q. After the "Olympic" was anchored out there, on May 9th, what currents did you observe, if any?

A. We had a northerly set, and a southerly set.

Q. Any particular time of the day that you experienced a northerly set?

A. No, they generally change according to the tides; [59] sometimes there is a strong set, and sometimes a light set; you never can tell how and when they change.

(Testimony of Joakim Martin Anderson.)

Q. Was the northerly set correlated to the tide, high tide or low tide?

A. I think on the ebb tide she will get a southerly set.

Q. A southerly set on the ebb tide?

A. Yes.

Q. And on the flood tide?

A. She may get a northerly set.

Q. Do you think the northerly and southerly sets were regulated by the ebb and flood tides?

A. Yes, and other currents, too, may cause it. There is no real theory on that.

Q. I suppose that you can't state, as to any particular time and tide, that there was any particular current, is that true?      A. That is right.

Q. Captain, after you anchored the "Olympic" at Horseshoe Kelp, on May 9th, did you ever cause any notice to be issued to mariners by the hydrographic office, of the location of that barge?

A. No, but I put it over the radio, and put it in all the papers in Los Angeles; four radio stations.

Q. You were advertising for patrons to come aboard the barge? [60]

A. That was for the location, too.

Q. Was that a broadcast to mariners which you were making?      A. Not mariners.

Q. What was the purpose of the broadcast?

A. It was to advertise that we were the best fishing grounds in California, and we caught more fish there than anybody else.



(Testimony of Joakim Martin Anderson.)

Q. You were advertising for the purpose of drumming up business, were you not?

A. Everybody that heard the radio knew that we were there.

Q. They heard you down in South America, and all parts of the world, is that right?

A. Yes.

Q. They were all tuned in to that particular broadcast?

The Court: Gentlemen, don't be facetious.

Q. By Mr. Adams: Captain, answer the question, please, whether you ever caused any notice to be issued by the hydrographic office of the location of the barge? That can be answered yes or no.

A. No. The hydrographic office, did you say?

Q. The hydrographic office. A. No.

Q. You know what office I mean, do you? [61]

A. Yes.

Q. That office issues regular notices——

The Court: Just a minute. There is no use in getting into an argument on that.

Mr. Adams: I was just endeavoring to illustrate the functions.

The Court: He said he knew.

Mr. Adams: Maybe I could assume that the court knows what a hydrographic office is.

The Court: You made it clear in your pre-trial brief, I think.

Mr. Adams: With the understanding, if the court please, that I would like to interrogate Cap-

(Testimony of Joakim Martin Anderson.)

tain Anderson further about these specifications, I will discontinue my cross examination at this time, so that other witnesses may be called.

Mr. Cluff: I will defer my redirect, if I may, too.

The Court: That is all for the time being. You are to remain in attendance at all times. [62]

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### BERTRAM WILLIAM GROTHE,

called as a witness on behalf of the libelants, being first duly sworn, testified as follows:

The Clerk: State your name, please.

A. Bertram William Grothe.

#### Direct Examination

By Mr. Cluff:

Q. Mr. Grothe, you were a witness to the collision on September 4, 1940, between the "Sakito Maru" and the barge "Olympic II"?

A. I was.

Q. You witnessed that collision from a small boat operated by you and your partner, called the "Marell"?

A. That is right.

Q. State if you have had any experience at sea?

A. About 8 years ago I spent about two years on merchant ships, as an able bodied seaman; but outside of that only on small boats.

Q. In September, 1940, what business were you engaged in?

A. I was engaged in commercial fishing, with my partner, Mr. Walter.

(Testimony of Bertram William Grothe.)

Q. That is, in this boat, the "Marell"?

A. That is right.

Q. On the morning of September 4th, were you aboard the "Marell", you and Mr. Walter? [63]

A. Yes.

Q. Just tell us, during the night and morning of September 4th, how you approached the scene of the collision, or location where the barges were anchored—let me put it that way.

A. It happened that the previous night we had fished in Catalina waters, around the east end, and having no success we pulled anchor there about 2:00 or 2:30 and headed for Fish Harbor, and Horse-shoe Kelp being in the vicinity of our course we stopped there, and decided to work up some fish, which was in the neighborhood of 6:15 or 6:30, as I recall.

Q. That was in the morning?

A. In the morning, yes.

Q. Mr. Grothe, I want to show you a drawing by Captain Anderson, directed by Captain Anderson, which shows three shapes; that is, "Olympic" Exhibit No. 4, and it shows three shapes, marked respectively "Olympic", "Point Loma" and "Rainbow" barge. There is no attempt to draw the vessels or their distances apart to scale, but according to what you saw there that night, does that drawing fairly reflect the relative positions of those barges with respect to each other, the breakwater being in a southerly direction from the "Point Loma"?

Mr. Adams: I would like to ask the witness a question on voir dire. [64]

(Testimony of Bertram William Grothe.)

The Court: All right.

Q. By Mr. Adams: Mr. Grothe, had you ever had occasion, prior to this, to be at Horseshoe Kelp, and observe the location of these barges?

A. Yes, many times.

Mr. Adams: Since the "Olympic" had anchored there on May 9th? A. Yes.

Mr. Adams: No further questions.

Q. By Mr. Cluff: Without any idea that they are drawn to scale, they show the relative positions of the three barges, one to the other?

A. I believe it does, unless this "Rainbow" barge would be to the north.

Q. A little bit to the north?

A. In other words, more in line with the "Point Lima."

Q. That is your recollection of that?

A. Yes.

Q. You came about 6:00 o'clock in the morning, as you testified—you came to anchor in the vicinity of those barges? A. Yes.

Q. How long is the "Marell"?

A. The "Marell" is 29 feet.

Q. Where, with reference to the "Olympic", did you anchor? [65]

A. We anchored directly astern of the "Olympic", and possibly two boat lengths, that is, "Olympic" boat lengths, astern of the "Olympic".

Q. About 500 or 525 feet astern of the "Olympic"? A. In this position.



(Testimony of Bertram William Grothe.)

Mr. Adams: I wonder if you will point out if any attempt is made to keep this to the same scale; since the "Olympic" is shown at this length position, that the "Marell" would be twice the length of the "Olympic" away.

The Witness: This is not to scale. That would not do justice to the position of the "Rainbow".

Mr. Cluff: I will stipulate with you now, Mr. Adams, that in respect to the drawing——

The Court: Gentlemen, you have stated and restated a dozen times that this is not to scale and I so recognize it, and there is no use in continually repeating that.

Q. By Mr. Cluff: You anchored with a single bar anchor? A. That is right.

Q. How did the "Marell" lie to her anchor?

A. The bow to the north.

Q. I wonder if you will draw in a little shape at the point you have indicated, showing the "Marell" lying to her anchor? Let us mark that with an M, indicating "Marell", on "Olympic" Exhibit No. 4. In that position you have told us there was about two lengths of the "Olympic" [66] between your position, and the position of the "Olympic's" stern? A. Yes.

Q. Can you tell about how far it was from your anchorage there to the "Rainbow" barge, according to your observation at the time?

A. I would say the "Rainbow" barge was at least four times as far from us as the "Olympic" was.

(Testimony of Bertram William Grothe.)

Q. That is, if it was two lengths of the "Olympic", it would probably be about eight lengths of the "Olympic" over to the "Rainbow" barge?

A. Yes.

Q. About 2,000 feet?           A. Yes.

Q. You arrived there, and came to your anchorage, at what time?

A. At approximately 6:15.

Q. 6:15?           A. Yes.

Q. What was the condition of the weather as you approached your anchorage?

A. As I recollect, we sighted the barges some time before we arrived there; possibly as long as about 15 minutes before we arrived on the scene as we sighted the barges, or longer.

Q. Then, after you came to anchor, did that [67] visibility continue?

A. No, it became somewhat denser, rather irregularly; that is, there were clouds of fog, and they would obscure vision for a few seconds, and then it would clear up a little bit.

Q. Could you see, as you approached, and after you came to anchor, could you see all three barges?

A. Yes, as we approached and anchored, we could.

Q. After you came to anchor, how did you occupy yourself?

A. Mr. Walter stayed on deck, and tried to raise a school of fish by throwing bait over, while I went down and put on a pot of coffee, and when I had the coffee ready Mr. Walter and I had some breakfast.

(Testimony of Bertram William Grothe.)

Then he went back to the deck, and I stayed below, and laid down on a couch. [68]

Q. Did you observe during that time, shortly after you anchored, any passing powered vessels, that is, large vessels, steamers, or motorships?

A. Yes, we did.

Q. State just what you did observe in that connection.

A. We observed a Luckenbach steamer passing east of the "Rainbow" barge.

Q. Eastward, is toward Long Beach?

A. Yes.

Q. How did you know it was a Luckenbach ship?

A. We could make out the name along her side.

Q. Was she blowing a fog signal?

A. She was, yes.

Q. And it was the regular four to six signal blast?

A. That's right.

Q. Did any other vessels pass, prior to the appearance of the "Sakito Maru"?

A. We heard another vessel, but did not see it. It passed out of sight.

Q. In what direction?

A. It was coming in to San Pedro.

Q. Was it eastward or westward of you?

A. It was to the eastward of us.

Q. You say you heard that vessel; I take it, you heard the fog whistle?      A. That's right. [69]

Q. About the time these two vessels passed did you hear any bells ringing from the barges?

A. Yes, at that time all of the barges were ring-

(Testimony of Bertram William Grothe.)

ing their fog bells.

Q. What time was that? When you say “at that time”, I wonder at what time you meant.

A. The two vessels, if I may elucidate, the two vessels did not pass at the same time. The Luckenbach steamer, as I recollect, passed possibly—this is very indefinite in my mind—possibly 10 or 15 minutes after we anchored, while the other steamer passed some minutes later.

Q. The one you did not hear whistle?

A. The one we did not see passed us some minutes later.

The Court: You did not see it but you heard it?

A. I heard it, but I did not see it.

Q. By Mr. Cluff: At the time you arrived, were the barges ringing their bells?

A. No, sir, I don't believe they were.

Q. When the fog got thicker, did the bells start?

A. Yes, sir.

Q. Could you hear the bells——

Mr. Adams: Just a minue, Mr. Cluff. I object to your leading the witness on this point.

Mr. Cluff: This is preliminary.

Mr. Adams: This is more than preliminary, the bells ringing. [70]

The Court: Objection overruled.

Q. By Mr. Cluff: How many of the barges did you hear ringing bells when the weather got thicker?

A. We heard all three very distinctly.

Q. Describe to the court the best you can, how the bells were rung, and how they sounded to you.



(Testimony of Bertram William Grothe.)

A. They had a rather distinctive tone. I don't remember in which order they rang, except they rang in regular order for the "Point Loma," for instance, and then the "Rainbow", and then the "Olympic".

Q. That is, they rang——

A. In rotation.

Q. About how long intervals did it take between each round of rings?

A. It seemed there was a bell ringing at least every 20 seconds, or 30 seconds possibly.

Q. So there would be a continuous round of ringing?

A. Yes.

Q. Was there any longer interval between periods of three rings, or did they all go about the same time apart?

A. No, they maintained a very constant cadence.

Q. Could you hear the diaphone or fog horn on the breakwater?

A. We could, at all times, yes.

Q. Were they ringing at about the same cadence, or at a greater or lesser cadence than the diaphone? [71]

A. That is rather hard to say, but I would think the cadence was approximately the same. I don't know.

Mr. Cluff: Will you stipulate that the diaphone blows every half minute?

Mr. Adams: The witness said he did not know.

The Court: His testimony is very indefinite. He said he does not know.

(Testimony of Bertram William Grothe.)

A. I did not correlate the two sounds, your Honor.

Q. By Mr. Cluff: I direct your attention to the ringing of the "Olympic" barge's bell. About how often did the peals come.

A. I beg your pardon?

Q. About how often did you hear the "Olympic" barge alone ring her bell?

Mr. Adams: That has already been asked and answered.

A. Between 45 seconds and possibly 70 seconds. I did not time them.

Mr. Cluff: We have got a little ship's bell here. I don't think this is going to make too much commotion. I am going to muffle this the best I can.

The Court: Nobody else has been muffled; I don't know why you should muffle that.

Mr. Cluff: I wonder if you will ring, as nearly as you can, the sort of peals you heard coming from the "Olympic".

Mr. Adams: How are you going to get this sound in the record? [72]

Mr. Cluff: I wonder if the court would mind timing it?

The Court: Let somebody else time it.

Mr. Adams: I broke my watch.

Mr. Cluff: Take mine; it's a good watch.

Q. Now, will you try to reconstruct the sound you heard coming from the "Olympic" bell?

(Witness rings the bell.)

Mr. Cluff: What did you get, Mr. Adams?

(Testimony of Bertram William Grothe.)

Mr. Adams: I got around five seconds.

Q. By Mr. Cluff: The other barges were ringing in rotation? A. Yes.

Q. About the same? A. That's right.

Q. After these bells started ringing, when the fog got thicker, did that ringing continue in the manner you have described, up to the time of the collision between the "Sakito" and the "Olympic"?

A. Yes, it did.

Q. That is, without cessation, and at the intervals you have told? A. That's right.

Q. I direct your attention to the next sound signal, aside from the bells, that you heard after the passage of the second vessel, which was off to the eastward; what was the next sound signal that you heard, if any? [73]

A. We heard a steamer's fog horn; not a steamer's—but an air horn.

Q. An air horn?

A. Yes; there is a distinction.

Q. In what direction did that bear from the "Marell", lying in the position you have described?

A. Roughly, the sound seemed to come from the south, which would be directly astern of us.

Q. Directly astern, you say? A. Yes.

Q. While you were lying at anchor, directly astern of the "Marell"? A. Yes.

Q. What sort of a sound was that, and its duration—how many blasts?

A. One blast and possibly six or seven or eight seconds' duration.

(Testimony of Bertram William Grothe.)

A. Yes; somewhat later. I don't know just how much later it was repeated.

Q. About how many repetitions of this signal did you hear before you saw anything?

A. Before we saw anything?

Q. Yes.

The Court: He was down asleep, taking a rest, the last time I heard. I want to know how he got up to see it. [74]

Mr. Cluff: I don't think he was asleep. He was below. Explain that to the court.

The Court: I want to know when he came up on the deck.

Q. By Mr. Cluff: Did you hear this while you were on deck, or down below?

The Court: Let him tell it in his own way.

A. To go into detail, as I lay down, I did not go to sleep. My partner, Mr. Walter, was on deck, and he had heard this previous steamer passing, and mentioned it to me that we should rig out our bell, and ring it, to play safe. At the time I mentioned to him that I did not think it was worth while, because we were within the triangle formed by the barges, but he decided to ring it, against my judgment, so he went ahead. He called my attention to the Luckenbach ship passing, and I got up off of the bunk, and looked through the cabin window, and saw that. Then I laid down again; then he called me once more, when he heard the blast from the motorship, which I also heard in the cabin, and at that time I went on deck.



(Testimony of Bertram William Grothe.)

Q. Did you get up when you heard the first blast?

A. Yes, when he called me.

Q. How far were you from the deck as you lay there in your bunk of the cabin?

A. It is a very small boat; just two or three steps. Our cabin was below deck.

Q. How did you get into the cabin, through a hatch? [75]

A. Through a hatch.

Q. You could carry on a conversation from the cabin to somebody on deck?

A. Yes.

Q. You came up on deck. At the time you came up could you see anything in the direction from which the whistle seemed to be coming?

A. No, sir, I could not.

Q. Go on from there, and tell us in your own way what did you see.

The Court: When you came up, could you see the barges?

A. I could.

The Court: All three of them?

A. Yes. As I say, I don't know whether we heard one more blast or two more blasts before we sighted the ship the "Sakito Maru", but she seemed to appear very close, and directly due south of us. When she first appeared, she was rather an indistinct picture, and she looked as though she were heading right for us.

Q. Could you see both bows of the steamer at that time?

A. Not immediately. For a few seconds it was just a black mass, and we couldn't tell which way she was heading.

(Testimony of Bertram William Grothe.)

Q. When you first saw this black mass can you give us any estimate of how far away it was?

A. Well, I should think she was easily a half a mile.

Q. From the point where you first saw the mass, will you [76] tell us in your own way with regard to the approach of the vessel?

A. The conversation?

The Court: What you saw.

Q. By Mr. Cluff: What you saw.

A. I saw the boat loom up, as she became more distinct, and in a very few seconds she seemed to be turning to her port, to our right as we were faced, and she seemed to be turning to her port.

Q. As exposed to which side of the steamer?

A. The starboard side.

Q. Go on with the narrative. She seemed to be turning to the port? A. Yes.

Q. In the direction of the "Olympic"?

A. Yes.

Q. Go ahead.

A. In a very short time she became very distinctly visible to us, so that we could make out her deck houses, mast and bridge.

Q. At that time could you see her side, the full side of the ship? A. Yes.

Q. That was which side?

A. That was the starboard side.

Q. Go ahead from that point. She came down where you [77] could see her. About how close, the closest position, did she pass from the "Marell"?

(Testimony of Bertram William Grothe.)

A. From the "Marell"?

Q. Yes. This being prior to the collision.

Mr. Adams: I object to the question as calling for the conclusion of the witness and assumes something not in evidence. It has not been shown that she did pass the "Marrell". She was coming in an entirely different direction, so that she could not pass the "Marrell".

Mr. Cluff: I will withdraw the question. Go ahead from the point where you said it got distinct, so that you could see her houses. What happened after that?

A. At that time it looked as though she were going to go ahead of the "Olympic", pass to the west of the "Olympic", in other words.

Q. That is, ahead of the "Olympic's" bow?

A. Yes. Then, as she came closer, we could see that she seemed to be, after all, going to hit the "Olympic". That was the way it appeared to us. We weren't sure that it was going to hit the "Olympic", or if it was going to miss, but as she came up we were very certain that she was going to crash.

Q. Did you observe what looked like a change of course, after she took this swing to the left, and went over in the direction of the "Olympic"?

A. Yes, we observed a swing apparently to her starboard. [78]

Q. That was the other direction?

A. Yes.

Q. After she made that apparent turn how did she head with reference to the "Olympic"?

(Testimony of Bertram William Grothe.)

A. She seemed to be heading almost directly into the "Olympic" then.

Q. As you observed the vessel make these maneuvers, could you form any estimate of her speed?

A. My estimate would be some place between seven and——

Mr. Adams: Just a minute, please. The question was could you form an estimate.

A. My estimate is——

Mr. Adams: No; are you able to form an estimate?

The Court: Answer yes or no, could you?

A. I think so.

Q. By Mr. Cluff: Will you say what you estimated her speed as being?

Mr. Adams: If the court please, I wish to object upon the ground that it calls for the conclusion of the witness, and no proper foundation has been laid.

The Court: Objection overruled.

A. My estimate is between 7 and 9 knots.

Q. By Mr. Cluff: With reference to your own boat, the "Marell", did she seem to be going, that is, with her full cruising speed, did she seem to be going slower than the "Marell's" cruising speed — faster or slower? [79]

A. Faster.

The Court: Will you read the question and answer?

(Record read by the reporter.)

The Court: I don't understand that.



(Testimony of Bertram William Grothe.)

Mr. Cluff: I propose to ask him now what the full cruising speed of the "Marell" was, and ask him to compare the full cruising speed of the vessel with the full cruising speed of his own vessel.

Mr. Adams: I object to that as calling for a conclusion of the witness, and assumes a fact not in evidence; no proper foundation has been laid; and it is incompetent, irrelevant and immaterial.

The Court: It goes to the weight of his testimony. The man has been a seaman for two years, and operating even a small boat should be in a position to give an opinion as to speed.

Mr. Adams: If the court please, I think it is two different things, judging the speed of a vessel upon which you are riding at the time, that being a small vessel, and judging the speed of a vessel that you see approaching, when you are on another vessel.

The Court: It depends on whether you are judging the speed by vibration, or the movement of the vehicle, or both.

Mr. Adams: In water you don't have any object against which you can measure distances.

The Court: That goes to the weight of the witness's [80] testimony. The objection will be overruled.

Q. By Mr. Cluff: What is the full normal cruising speed of the "Marell"?

A. Approximately 6 to 7 knots

Q. As the vessel approached this point where she made her apparent turn to starboard, could you

(Testimony of Bertram William Grothe.)

see the forward house, or the decks, or structure of the vessel clearly?      A. Yes, I could.

Q. Did you observe any person on the forward deck, or forecastle head, or any other part of the vessel?      A. I did not.

Q. If a man had been standing—I wonder if the depositions are available? I am showing you a photograph, Mr. Grothe, which is marked Petitioner's Exhibit No. 3, which purports to be a photograph of the starboard bow of the "Sakito Maru", showing the forecastle head above the name, and, as I understand it, the bulwark begins to——

Mr. Adams: Just a minute. I don't think it is competent, if the court please, for Mr. Cluff to explain to the witness the structure of the "Sakito", and then ask a question based upon that. He should ask the witness what he saw, and let him testify.

Q. By Mr. Cluff: I am showing you now a newspaper photograph of a vessel bearing the name "Sakito Maru", and I will ask you if you will look at that photograph, and tell us if that is the vessel that you saw collide with the [81] "Olympic" on the morning of September 4, 1940—if that is a fair picture of the vessel.      A. Yes.

Q. Do you see standing up in the extreme bow a little figure there that looks like a man?

A. I do.

Q. If, as the "Sakito Maru" approached the "Olympic II", during the period you have described

(Testimony of Bertram William Grothe.)

here, she turned first to the left, and then to the right—if a man had been standing in the position that this little figure seems to be standing there in the bow with his body, from the navel up above the top of the bulwark, would you have been able to see him?

Mr. Adams: Just a minute——

The Court: I am going to say that the objection you intend to make is good. He can tell what he saw.

Q. By Mr. Cluff: Did you see any figure in the extreme bow of the “Sakito Maru” at that time, or any part of a human there? A. I did not.

Q. The head, shoulders, torso, or anything else?

A. No, sir.

Mr. Cluff: I will ask that the newspaper photograph, that part of it which shows the “Sakito Maru” be offered as “Olympic’s” next exhibit.

Mr. Adams: I will object to it upon the ground that it [82] is not shown in the testimony under what circumstances that photograph was taken, and it seems to me it is a very distorted photograph, if the court please, because it is taken down below, and it doesn’t even show clearly the damaged portion of the “Sakito’s” bow.

Mr. Cluff: I will submit the offer.

The Court: I don’t know why there is all the mystery about what the “Sakito Maru” looks like. The witness has identified it as being the boat he saw on that morning, and for that purpose it is admitted. If you want to present a better picture, you can do so.

(Testimony of Bertram William Grothe.)

Mr. Adams: If the court please, this newspaper picture, which Mr. Cluff introduces, contains a photograph of the survivors under rather pitiful circumstances.

The Court: The only part that is admitted is the part that contains a representation of the "Sakito Maru".

Mr. Adams: I move that the other inflammatory material be stricken from the exhibit.

The Court: The clerk is directed to use his scissors on it, so that the court will not be moved by the pitiful picture that counsel has described.

Q. By Mr. Cluff: At the time the vessel was approaching the "Olympic", as you have testified, did you consciously look for any person on the forward deck, or on the forecastle head?

A. Yes, we did. [83]

Q. So, at the time you were looking there, you had in mind searching out for a person somewhere on the forecastle head?

Mr. Adams: I object to that as already having been asked and answered, if the court please.

A. Yes, I did.

(Adjournment until 2 o'clock p. m. of the same day.) [84]



AFTERNOON SESSION

2 o'clock

---

BERTRAM WILLIAM GROTHE

recalled.

Direct Examination

(Resumed)

The Court: Proceed, gentlemen.

Q. By Mr. Cluff: When we were at the close you had just told us about seeing the "Sakito Maru" turn to her right toward the "Olympic". Can you give us an idea of about how far away she was from the "Olympic" when she made that right turn?

A. I imagine between three and two boat lengths, the "Sakito Maru" boat lengths, rather.

Q. Between three and two boat lengths.

A. Of course, the turn was not abrupt at the swing.

Q. Was it a right-angle turn or a short turn?

A. It was not a short turn; no.

Q. About the time it made that turn did you notice any difference in the ringing of the "Olympic's" bell?

A. At that time, I don't believe. I think they were still ringing conventionally.

Q. Then, at any time after she made that turn did you notice any difference?

A. Well, I think about the time the "Sakito

(Testimony of Bertram William Grothe.)

Maru'' was about a boat length, or about approximately 500 feet away, the ship's bell on the "Olympic" began to ring [85] continuously.

Q. Continuously. That is, not in peals, but just a steady clang-clang-clang?

A. That is right.

Q. Did it appear as loud or louder than is had before?

A. Louder.

Q. And a continuous, steady peal?

A. That is right.

Q. And that lasted how long?

A. Oh, possibly 10 or 15 seconds.

Q. 10 or 15 seconds. How long do you think it took between the start of that peal and the collision?

A. Well, the peal ran right up to the time of the collision.

Q. Right up to the collision. You had gotten up to the bell on the "Marell" and had that started ringing?

A. We had been ringing that for several minutes before this, oh, possibly 15 minutes.

Q. Had you started ringing the "Marell's" bell before the "Sakito Maru" came in sight?

A. Yes.

Q. By the Court: Is the bell on your boat manually operated?

A. Yes, sir.

Q. And your partner was doing the ringing?

A. Yes. [86]

Q. By Mr. Cluff: How big a bell is that one on your boat?

(Testimony of Bertram William Grothe.)

A. That is an 8-inch ship's bell.

Q. That was the same size as the one we have been using here for demonstration?

A. That is right. No; that is a 6-inch, isn't it?

Q. No; this is an 8-inch bell.

A. Yes. Well, ours was a large bell.

Q. After that right-hand turn as the "Sakito" approached the barge did you notice any slowing down of her speed?      A. No.

Q. She apparently kept the same speed that she was going before?      A. Yes; I would say so.

Q. And did you see, after she made the right-hand turn did you see anybody on the boat or anywhere on the focastle head of the vessel?

A. No. One time——

Q. At any time before the collision did you see anybody up there at all?

A. Not on the focastle head. I saw someone on the well deck.

Q. All right; the well deck—I am showing you this photograph of the "Sakito Maru" and marked Petitioner's Exhibit No. 3 in the limitation proceeding, by the way, [87] and ask you to point out to the court the focastle head.

A. The focastle head is this portion of the ship here.

Q. And the well deck is—indicating the level of the deck above the break and right over the name of the vessel. And the well deck area is where?

A. The well deck is from this point to the bridge, to the deck house.

(Testimony of Bertram William Grothe.)

Q. Will you state where you saw this man and what he was doing?

A. I saw this man some place aft the break here.

Q. Indicating the position on the well deck just aft of the break of the focastle head. And what was he doing?

A. He was running aft.

Q. Running aft towards the bridge?

A. Yes.

Q. Was he making any noise?

A. Yes. He was shouting and seemed to be waving his hands.

Q. Did you hear any other shouts from the vessel?

A. Yes.

Q. From the "Sakito"?

A. Yes; we heard the shouts from the bridge.

Q. Heard shouts from the bridge. How long was that before the impact?

A. Well, I would say within a half a minute of the time of the impact. [88]

Q. Was that after she made her turn to the right?

A. Yes.

Q. And after the "Olympic's" bell was ringing continuously, or before.

A. About the same time.

Q. Did you notice on the after end of the fore-castle head there was a railing composed of apparently rods or wires?

A. Yes.

Q. Did you see any man at any time in that area, any place forward of the bridge, including the fore-castle?



(Testimony of Bertram William Grothe.)

A. I saw no one at any time forward of the bridge, or on the forecastle.

Q. Your position, as you have testified, was somewhere about 500 feet or thereabouts, from there?

A. Yes. The fore part of the ship was outlined against the horizon.

Q. At the time, or just before the crash, did you hear any whistle signals from the "Sakito Maru"?

A. How long before the crash?

Q. You have testified about three long fog whistles. After she came in, some time after she made her turn, did you hear any whistle?

A. Not until almost the instant of the crash.

Q. That is, after you saw this man running aft?

A. Yes, within that half minute, all these things [89] happened. Just exactly what their chronological order was, I couldn't swear.

Q. Will you describe the whistle, the best you can?

A. Three short blasts.

Q. That is woo-woo-woo?

A. Yes. It was not a fog signal; it was a collision or reverse signal.

Q. The engines were going astern?

A. Yes.

Mr. Cluff: I will offer in evidence, in this case, the photograph as "Olympic's" next exhibit.

The Clerk: "Olympic's" Exhibit No. 6.

Q. By Mr. Cluff: After the crash took place, just what did you see with respect to the two vessels, from your viewpoint on the "Marell"?

(Testimony of Bertram William Grothe.)

A. The "Sakito" cut into the "Olympic," and he was still going at a good clip, and she seemed to push the "Olympic" possibly as much as a hundred, or over, feet, swinging on an arc on about her bow anchor.

Q. An arc in which direction?

A. Towards the "Point Loma," about her bow.

Q. It would be an arc toward the westward?

A. Toward the north I would say; northwest.

Q. Did that change the position of the "Olympic" so that you could see clearly either side?

A. Yes, it allowed us to see the port side; at least [90] that portion of it that was not hidden by the "Sakito Maru."

Q. Could you see the "Sakito Maru" change her heading in any way after the impact?

A. No, I did not notice any change of heading at the time of the impact.

Q. Did you notice whether her stern swung around to the right?

A. Yes. I wouldn't like to say I did notice, because I don't believe that I——

Q. Did it appear to you that the "Sakito" presented more of her stern to you than she had just before, or at the moment of the impact?

Mr. Adams: I object to the question upon the ground that the witness has already indicated that he does not know.

The Court: I think that is true.

Q. By Mr. Cluff: In the meantime, on the

(Testimony of Bertram William Grothe.)

“Marell”, what had you and your partner been doing from, say, about the time of the impact?

A. We had watched the progress of the “Sakito Maru”, and as soon as we became aware definitely that the crash was inevitable we made the decision to pull up anchor. Walter went on the fore deck of our boat and began to pull up anchor, while I went below to start the motor.

Q. Did you come back on the deck after starting the motor?           A. No. [91]

Q. Were you able to observe from your position below anything that was taking place on the two vessels that were in collision?

A. Yes, just as well, or almost as well, as if I had been on deck.

Q. That is through what, the portholes or windows?

A. Yes; the windows run the whole length of the cabin.

Q. Tell the Court what you saw from the time you went below, with respect to the two vessels?

A. I think I went below just about the time that most of the action was taking place; just possibly, oh, 5 seconds before the crash, the actual crash, I could observe the progress of the “Maru”; I saw the actual impact from below, and saw the “Olympic” listing to port, or to her starboard, rather, and being swung about this arc, as I mentioned before.

Q. The “Olympic” took a list to starboard?

A. Yes.

(Testimony of Bertram William Grothe.)

Q. On the impact? A. Yes.

Q. Could you tell about how much of a list, in degrees?

A. I would say about as much as 15 degrees list, or possibly more.

Q. 15 degrees to starboard? A. Yes. [92]

Q. About what time did the "Marell" start to move, if at all?

A. The "Marell" started to move about the same time that the "Maru" was backing up.

Q. Who took the wheel?

A. I was at the wheel.

Q. Then did you see the "Sakito Maru", or did you see the vessels separate, the "Olympic" and the "Sakito Maru" separate? A. Yes.

Q. Could you tell whether the "Sakito Maru" was backing out, or whether they were separating through some other means?

Mr. Adams: I object to that as calling for the conclusion of the witness. I have no objection to his stating what he observed.

The Court: I think that is true. The objection is good.

Q. By Mr. Cluff: Could you see the water wash, if any, from the "Sakito Maru's" propeller?

A. No, I did not observe the water wash of the propellers.

Q. Just tell us what you saw after the collision, and the vessels had come to rest in the water.

A. I saw, as the "Sakito" came into the "Olym-



(Testimony of Bertram William Grothe.)

pic'', and listed at the port, and pushed it through that arc, it seemed to hang there for a very short time. I don't like [93] to say the minutes or seconds, but it was probably less than a minute. Then she reversed, and she pulled out of the hole.

Q. You say she reversed. How do you know she reversed?

A. I mean reversed her direction. I don't know about her engines.

Q. How much separation took place?

A. The "Sakito" continued to reverse some distance, possibly half a mile, at least she left the scene for that distance. Whether she was all the time in reverse or not I don't know. My attention was focused on the wreck at the time.

Q. She moved back away from the "Olympic"?

A. Yes.

Q. A very considerable distance? A. Yes.

Q. Did you notice any disturbance of the "Olympic's" structure as the "Sakito" separated from her?

A. On the deck?

Q. Yes, anywhere.

A. Yes, the deck house seemed splintered, and the planking seemed to be flying about.

Q. Did you hear any noise at the time they pulled out?

A. It was a sort of a grinding crunching noise.

Q. What happened after the "Sakito" pulled out, with [94] respect to the "Olympic"?

A. The "Olympic" righted; swung a little bit to

(Testimony of Bertram William Grothe.)

her port, and then righted, and then went down very rapidly.

Q. At that time were you in a position to see the starboard side of the "Olympic"?

A. No; the port side.

Q. Then you couldn't see the water taxis alongside, if there were any?      A. No, sir.

Q. You couldn't see anything that was going on at the gangway?      A. No.

Q. About how long after the boats separated did the "Olympic" go down?

A. I don't think it was over two or two and a half minutes.

Q. Had you been able to obtain with the "Marell" the approximate position of the "Olympic" at the time she went down?

A. We weren't quite up to it.

Q. After the "Olympic" went down, what did you do?

A. We kept the lookout for any survivors that we could possibly have picked up.

Q. Did you find any survivors, or did you find any bodies?

A. No, sir; we found a body. We did not find [95] survivors.

Q. Was that body identified in your presence?

A. Yes.

Q. Who was it?      A. Curtis Johnson.

Q. That was the only body or survivor that you picked up with the "Marell"?

(Testimony of Bertram William Grothe.)

A. That is right.

Q. Did you notice whether the "Sakito Maru" had a lifeboat in the water?

A. We noticed that she did not have a lifeboat in the water.

Q. Did you ever see a lifeboat of the "Sakito Maru"?      A. Yes.

Q. When with reference to the sinking of the "Olympic"?

A. At the very least, over an hour after the collision.

Q. As you approached the wreck with the "Marell", about how fast did you go?

A. We probably picked up a headway and in about 100 feet or so we were probably going about 5 or 6 knots as we approached the scene.

Q. Going back to the separation of the "Sakito Maru" and the "Olympic", from the time they separated did the distance increase constantly?

A. Yes. [96]

Q. You have fished in the waters around San Pedro Bay for a number of years?

A. We fished commercially only the past year, but I have fished, sport fishing.

Q. Are you familiar with the waters of what they call Horeshoe Kelp, where these barges were anchored?      A. Yes.

Q. How many years have you been familiar with those waters?

A. Ever since I have been in California.

(Testimony of Bertram William Grothe.)

Q. That is how long? A. Six years.

Q. Have you fished in those waters at various times during those six years?

A. A number of times.

Q. As often as every year? A. Yes.

Q. On what sort of vessels?

A. I haven't been on the "Olympic", but I have been on the "Belmont" several times previous to this.

Q. The "Belmont" is what is called the "Rainbow" barge?

A. Yes, the "Rainbow" barge; as well as live bait boats.

Q. Have you had occasion, on your visits to Horseshoe Kelp, in 1940 and previous years, to observe whether or not [97] there were various types of fishing vessels that were using those waters, at anchor, or drifting about fishing? A. Yes.

Mr. Adams: I object to that as incompetent, irrelevant and immaterial.

The Court: Overruled.

A. I don't believe I have ever been out there that there hasn't been some part of a fishing fleet, commercial, as well as sport fishing boats, in that vicinity.

Q. By Mr. Cluff: Will you tell on the average how many vessels you have seen around in that vicinity fishing in the Horseshoe Kelp, within the range where the three barges were lying?

Mr. Adams: I object to that as speculative, in-



(Testimony of Bertram William Grothe.)

competent, irrelevant and immaterial. What difference does it make what the average was?

Mr. Cluff: My purpose is to show that this is a well established and a long established fishing ground, and there is regularly there a large number of vessels, of all classes.

Mr. Adams: How does that bring notice to the skipper of a foreign vessel?

Mr. Cluff: I think it is material, if we show it is a well established fishing bank and he is charged with notice.

The Court: Objection overruled.

Mr. Adams: If the Court please, that skipper might come [98] into this port for the first time.

The Court: I might walk down a street for the first time, and I would have to keep my eyes open.

Mr. Adams: If you are coming through a fog, you can't see anything with your eyes open, and how would you know?

The Court: But the libelant raised the question, and cited, as you are aware, a number of authorities on the question of fishing grounds, and the liability of vessels in that vicinity, and I am going to permit the libelant to introduce his evidence on that, because I realize, and the rest of counsel realize, that eventually there will be a trial de novo of this case in the Circuit Court, and I want all the facts before them.

Mr. Adams: I wish to add the objection that the evidence is, of course, additionally incompetent,

(Testimony of Bertram William Grothe.)

irrelevant and immaterial, because the conditions described by the witness, and asked for in the question, could not have been brought to the attention of the master of the "Sakito Maru", or any of her officers, or in fact the master officers of any ship.

The Court: Same ruling.

The Witness: May I have that question?

Mr. Adams: I add the further objection, no proper foundation laid in the matter of establishing any custom or practice.

The Court: All this witness is testifying to is what he [99] has observed himself. You may answer the question.

(Question read by the reporter.)

A. As to an average, there might be days when there would only be three or four fishing boats out there. When the fish happen to be hitting there, there might be 100 or 150 boats in that same locality.

Q. By Mr. Cluff: Have you ever been out there fishing on a Saturday, Sunday or a holiday?

A. Yes; often.

Q. On those days could you give us any idea of the number of boats?

Mr. Adams: May my objections be considered as running to this entire line of questioning, if the Court please?

The Court: Yes. It is understood that respondent's objection continues to run against evidence that tends to show that this was a fishing ground, a recognized fishing ground by the public.

(Testimony of Bertram William Grothe.)

A. On Saturdays and Sundays, of course, sport fishermen were out there a great deal heavier than they were on week days, and there were several hundred boats out there on any Saturday I have ever visited the fishing grounds.

Q. By Mr. Cluff: That is, right on the bank within the area covered by these three barges?

A. Yes, sir.

Q. By the Court: How large an area is this area [100] they call the "Horseshoe Kelp"?

A. It is quite extensive a reef in the shape of a horseshoe. That is where it gets its name. And any portion of that reef is favorable to fishing. The Barges are anchored approximately on that reef in the circle, you might say, that that reef forms. I don't know just exactly how extensive the area is, but the boats are usually scattered over an area of about a mile there, a square mile.

Q. By Mr. Cluff: Will you state the various kinds of boats you have observed out there, private, sport, fishing boats? You have mentioned bait boats. What do we mean by a bait boat?

A. A live bait boat is a boat that takes out passengers at so much a passenger.

Q. It functions like these fishing barges, except it moves about? A. Exactly.

Q. Have you seen other types of commercial fishermen like yourself?

A. Yes; a good many commercial fishermen.

Q. Are these boats all at anchor or at rest as they lie there and fish?

(Testimony of Bertram William Grothe.)

A. It depends on what type of fishing they are doing. If they are fishing with live bait they will anchor. A large majority of these live bait boats that take passenger, [101] they fish with live bait and anchor, and smaller commercial boats troll, and they apparently move about on the fishing grounds.

Q. Moving about slowly and trolling their live bait?  
A. Use group nets.

Q. The system you were using on the "Marell" that night, was your vessel at rest with anchor or drifting?

A. No; we were at anchor. We were doing a different type of fishing.

Q. What type of fishing were you doing?

A. We were fishing with mackerel.

Q. With hand line?

A. No; group nets, bait nets.

Q. That is, you bait the net and the mackerel come up and you grab them?

A. That is right; we scoop them out if we can.  
The Court: If you can.

Q. By Mr. Cluff: Do you know during the six years you have been familiar with "Horseshoe Kelp" of any other fishing barges having been anchored there, with the exception of the "Point Loma", the "Rainbow" and the "Olympic"?

A. I don't recall any others.

Q. Do you remember an old barge named the "Empress"? Did she ever lie out there to your knowledge?



(Testimony of Bertram William Grothe.)

A. No; I don't believe I was familiar with her.

Q. I am not sure myself. Anyhow, you know that the [102] "Point Loma" and the "Rainbow" were around there a number of years previous, each year?

A. The "Point Loma" moved up from the south.

Q. Do you know in what year?

A. I don't know whether they were there the year before 1939 or not.

Q. How about the "Rainbow"?

A. The "Rainbow" had been there for some time. The "Rainbow" was an established barge there.

Q. By "some time" you mean several years?

A. Yes.

Mr. Cluff: That is all, thank you.

#### Cross Examination

Q. By Mr. Adams: Mr. Grothe, I believe you stated that about 8 years ago you were an A. B. seaman and had followed that occupation for a period of about two years?

A. Yes, sir.

Q. Is that correct?

A. That is right.

Q. When you discontinued that occupation what work did you take up?

A. I came out to California and went to work for a construction company, Winston Brothers & Company.

Q. What type of vessels did you serve on when you were an A. B. seaman? [103]

A. I served on the Luckenbach boats.

Q. On the intercoastal run?

A. That is right. And I also served on a coast-wise vessel on the east coast.

(Testimony of Bertram William Grothe.)

Q. How long did you continue to follow the construction business?

A. Well, I was rather irregularly employed since I have been out here. I worked for Winston over a period of three years, off and on.

Q. And you came out here at what time?

A. 1935. Do you want a correct list of my jobs since I have been here?

Q. No; I am not particularly interested in the name of your employers; but I am just trying to find out what type of work you have followed since you left the sea. And, as I understand, you followed the construction business?

A. Mainly, yes.

Q. Mainly. Did you continue to follow work of that character up until the time you started in to fish commercially?

A. I had no connection with the sea, if that is what you want to know.

Q. Yes; that is what I mean.

A. Until the time that we got the fishing boat.

Q. When was that that you bought it?

A. That was in December of 1939. [104]

Q. How long did you continue to operate that boat and fish commercially?

A. Until December of 1940, one year.

Q. About one year. Since that time your occupation has not been connected with the sea, has it?

A. That is right.

Q. You are presently employed in the aviation parts manufacturing business?

(Testimony of Bertram William Grothe.)

A. That is right.

Q. Did you continuously fish commercially from December, 1939 to December, 1940, or were there certain seasons that you fished and other seasons when you did not fish?

A. We fished during the early months until, I think, about the latter part of March or the beginning of April, continuously commercially, that is, at least on an average of four or five days a week, or nights a week. After that we overhauled our boat and fished sport fishermen, took parties out sport fishing. So we were not out every day, but we were out probably on an average of two or three days a week at least. And then we started again on the mackerel toward the end of the year, say, about—no; we started in July. In July we started mackerel again.

Q. You spoke of these fishing boats being in the vicinity of Horseshoe Kelp. Was that condition that you have described true of all times of the year?

A. No; it was true, more so—there were different [105] ships there during the sport fishing season, which ranges from April through, oh, October, or to October at least. There were a good many sport fishing boats in that region. During the winter months it was pretty well confined to commercial fishermen.

Q. Do you know what time of the season or year that the fishing barges, that is, the "Rainbow" and the "Point Loma" moved out to the Horseshoe Kelp and were anchored there?

(Testimony of Bertram William Grothe.)

A. I couldn't say when they moved out; no.

Q. Do you recall whether they were there, for instance, in January or February of 1940?

A. I knew—no; the "Point Loma" wasn't, I am sure, and I am fairly sure that neither the "Olympic" nor the "Rainbow" were there.

Q. On all the occasions when you and your partner fished commercially, which, as I understand it, you did about four or five days a week, you did not go to Horseshoe Kelp on each of those occasions, did you?

A. No. No, indeed.

Q. There were other areas where you fished, is that correct?

A. That is right.

Q. Then when you were taking out sport fishing parties you did not always take those parties to Horseshoe Kelp, did you? [106]

A. That is right.

Q. Have you any idea of how often, maybe, during the summer months you took sport fishing parties out to the Horseshoe Kelp, let us say, since the middle of May, until the time of the collision?

A. Well, I can put it on a percentage basis. Probably three out of four times we stopped there, either coming or going to other fishing ground, to try there or else just fished there exclusively.

Q. I see. Were you taking out sport fishing parties at the time of the collision, or had you discontinued doing that?

A. We had discontinued sport fishing at that time.



(Testimony of Bertram William Grothe.)

Q. Did that type of fishing end along about Labor Day?

A. No. Some of the sport fishing boats ran later on into the year; but, of course, most of the fishermen stop fishing about Labor Day, the sport fishermen.

Q. At the time that you and your partner approached the barges after leaving Santa Catalina Island on the morning of the collision, I believe you testified that you sighted the barges about 15 minutes before you arrived at Horseshoe Kelp, is that correct? A. Yes.

Q. Had you encountered any fog between Santa Catalina Island and Horseshoe Kelp en route? [107]

A. No.

Q. What time did you leave Santa Catalina Island, do you recollect?

A. As I recollect, it must have been between 2:30 and 3:00.

Q. As you approached Horseshoe Kelp were you able to see any fog ahead of you?

A. I couldn't see the shore line. It was hazy.

Q. It was hazy? A. That is right.

Q. As you approached Horseshoe Kelp and the fishing barges anchored there did you hear any bells sounded by them?

A. No; not at that time.

Q. It was not until after you came to anchor there that you heard them commence sounding their bells, is that correct? A. That is right. [108]

Q. Have you any idea how long you had been

(Testimony of Bertram William Grothe.)

there after about 6:15 before you heard the first bell sounded by one of the barges?

A. I don't see that I can very well state it in minutes. I can say that we were there a very short time, if that will help you, and I can't say it was two minutes or ten minutes.

Q. I see. I believe you testified those bells were rung in order, first one barge would sound a distinctive bell, followed by another. Then I believe you said the last barge was the "Olympic" that sounded a distinctive bell, is that correct?

A. That is right. Now, I don't know what order they rang in, except that they rang in a regular rotation.

Q. I believe you testified that there was a bell ringing about every twenty to thirty seconds?

A. Yes; I did.

Q. Is that your recollection of it now?

A. That is my best recollection; yes.

Q. You mean by that, that at least one of the barges was ringing a bell? A. That is right.

Q. And there was not more than thirty seconds interval between the bell of one barge and the bell of another; is that what you mean?

A. That is right.

Q. About how long elapsed between each bell sounded by [109] each barge; in other words, how much time elapsed between a bell sounded by the "Olympic" and the next bell sounded by that barge?

A. The next bell sounded by the "Olympic"?

Q. By the "Olympic", yes.

(Testimony of Bertram William Grothe.)

A. Well, roughly, a minute from the time of one ringing to the time of the next ringing of the same barge.

Q. Of the same barge?           A. That is right.

Q. I believe you testified that within a period of ten or fifteen seconds prior to the impact you heard the bell of the "Olympic" being sounded continuously?           A. Yes.

Q. Is that right?           A. That is right.

Q. Was there any difference in the tone of the bell or the apparent strength of the strokes; in other words, was it louder?

A. It sounded pretty frantic. Well, as you might say, that the man was exerting himself to ring it just as loudly as he possibly could.

Q. Was the bell being sounded then more loudly than it had been up to that time?

A. Possibly. Yes; it was ringing faster and more violently. Yes.

Q. Well, do you have any distinct recollection now that [110] the bell, while it was being sounded continuously, was also sounded more loudly than it had been previously?

A. It impressed me that way; yes.

Q. On the many occasions when you say you have been out there at Horseshoe Kelp prior to this was there ever fog?

A. Yes; there were fogs at various times there.

Q. Do you recall having been out during fog since the "Olympic" was anchored at Horseshoe Kelp,

(Testimony of Bertram William Grothe.)

that is, prior to the collision, some other occasion prior to the collision.

A. I can't recall any particular date, but I know that we were out there in foggy weather several times throughout the year that we fished there, and probably some of them included the summer months when the barges were there.

Q. On these other occasions did you notice bells being sounded by the barges? A. Yes.

Q. While it was foggy? A. Yes.

Q. Were they ringing their bells on those occasions with about the same strength as the bells were being sounded prior to the time that you heard the bell of the "Olympic" being sounded continuously?

A. Yes.

Q. In other words, prior to fifteen seconds before the impact the bells were being sounded as you had always heard them before? [111] A. Yes.

Q. With respect to the strength?

A. That is right.

Q. Now, would you say that during the time, prior to the sounding of the "Olympic" bell continuously, those bells were being sounded lightly?

A. Definitely not.

Q. Do you know the purpose of the distinctive rings of those bells?

A. No; I don't. I surmise it is to just identify themselves, so that the approaching ship knows there is more than one ship at anchor there. That is my assumption, but I don't know.



(Testimony of Bertram William Grothe.)

Q. That is just your assumption?

A. That is right.

Q. I believe you stated that you were down below when you first heard a whistle coming from the direction that the "Sakito" later appeared from, is that correct?      A. Yes.

Q. How many blasts or signals did you hear from her whistle prior to the time you actually sighted her through the fog?      A. Either two or three.

Q. At the time you first heard——

Q. By the Court: Were those blasts one following the other or—— [112]

A. No, sir. They were intermittent blasts of, roughly, a minute.

Q. By Mr. Adams: In other words, there were intervals of a minute between each of the three blasts?      A. Yes.

Q. That you heard?      A. Yes; that is right.

Q. Did the second blast seem louder than the first blast that you heard?      A. Yes.

Q. Was the first blast that you heard loud, or fairly loud, or dim, or very dim? Can you give us some sort of description of it?

A. I don't know. You almost would have had to have heard a fog horn at sea to be able to judge that. I don't know how "very dim" sounds to you. I know how it sounds to me.

Q. Well, we will have to accept your description of it. Can you give us your description of it?

A. Well, it was easily heard.

Q. It was easily heard?

(Testimony of Bertram William Grothe.)

A. Yes; although it was hard to define the exact direction of it.

Q. Of course, that is always true of hearing whistles in fog, isn't it?      A. That is right; yes.

Q. What was the first portion of the "Sakito" that you [113] saw when you first sighted that vessel?

A. It is almost impossible to state which portion. It loomed up as a mass. The first sight you had was just a black mass which was very indistinct in the distance.

Q. In other words, the impression that you first received when you sighted her was of a black mass, is that correct?      A. That is right.

Q. When was it with reference to seeing her and being impressed as seeing a black mass that you saw her make any turn which you construed to be a turn to her port; about how much time elapsed?

A. Well, it developed in a very short time. She became more clearly visible in a very few seconds, and whether it was just a matter that she became visible to us as a ship rather than just an indefinite something, or whether she was actually swinging, I don't know. That is a matter of conjecture. But it all happened over a space of a very few seconds that she became definitely a ship.

Q. I see.

A. And at that time we could see more of her side than we could at the very first.

Q. And that gave you the impression that she was swinging to the left?      A. That is right.

(Testimony of Bertram William Grothe.)

Q. Could you see more than a black mass at that time? At the time you thought that she was swinging to the left, in [114] other words?

A. Yes; we could. We could definitely see a shape of the ship and identify her as a ship.

Q. Could you see her superstructure?

A. Yes.

Q. That was painted white, wasn't it?

A. That is right.

Q. Do you know how far up her superstructure you could see? Could you see clear to the top of her masts?

A. That is not a very fair question because it progressed.

Q. I see.

A. At first we could—first, the black hull became distinguishable, and, as the ship approached we could make out the rest of the detail.

Q. I see.

A. Just exactly at what point in the matter of time it was, I couldn't say.

Q. Well, in any event her masts were not visible to you when you first saw this black mass?

A. No.

Q. Were her masts visible to you when you received the impression that she was swinging to the left?

A. They were becoming visible.

Q. Were they clearly visible; that is, in other words, could you see clear to the tops?

(Testimony of Bertram William Grothe.)

A. Of course, we saw the foremast first, and began to see [115] more of the detail of the ship as it approached.

Q. When you later received the impression that she was swinging to her starboard, or to the right, were all of the masts,—by that, I mean clear to the top of both masts—visible to you?

A. The whole ship was very much in detail visible.

Q. Could you see any change in the distance between her masts at that time, or were you watching the masts?

A. No, she was really a little bit too close for us to be able to judge it that way, inasmuch as she was passing us too, but the change in direction was judged by me, at least, in the view we had of her bridge or her midship deck house, which at first presented a rather perpendicular view, and then we could see more of the face of it, if you see what I mean.

Q. Yes, I see what you mean.

A. That's why I formed the opinion that she was swinging to starboard.

Q. Where were you at the time you were watching her, when her deck gave this impression to you—her bridge gave this impression to you? Were you on the deck?

A. I was still on deck.

Q. At the stern of your boat?

A. Amidships. There isn't much difference on that boat.

Q. Your prior observation of her course then was



(Testimony of Bertram William Grothe.)

without any reference to her masts, is that correct?

A. What do you mean by prior? [116]

Q. I will withdraw the question. While you were at sea did you ever stand lookout? A. Often.

Q. Isn't it usually the practice to judge the course of a ship, especially on approaching you, by separating her masts?

A. The range lights are for that purpose. Yes, that's right.

Q. Were you given any assistance in forming your observations as to her course by judging her masts on that occasion?

A. Not until she became plainly in view, and that was after she had made the initial turn to port; at least what we thought was the initial turn to port, and after that we could see the ship, as I say, in fine detail and we could make out her masts and all her superstructure, and everything, but before that we couldn't use her masts, because they weren't visible to us.

Q. And the thing that impressed you that the vessel was swinging to the right——

A. To the left.

Q. What gave you the impression that she was swinging, was by virtue of the fact that more of the bridge was over to your view?

A. More of the front of the bridge.

Q. The forward end of the bridge?

(Testimony of Bertram William Grothe.)

A. That's right.

Q. Have you any idea, in terms of degrees, how far she [117] might have swung on that occasion, to the right?

A. That would be, at the best, a guess, if I were to make it.

The Court: Let us not give any guess.

Q. By Mr. Adams: I won't ask you for that, if you are not sure.

A. I don't feel that I can give you a good answer on that.

Q. How high was your deck, that is, the deck of your boat, above the surface of the water at that time, if you have any idea on that?

A. Oh, two feet; just barely above.

Q. You don't have any more freeboard than that?

A. No; that's more than some of them.

Q. That is true. Would you say that the speed of the "Sakito Maru", as you saw her approaching, was not over eight knots per hour?

A. I wouldn't say it was not over eight knots an hour, no, sir.

Q. Do you recall having testified before the A. Board at San Pedro?           A. Yes.

Q. That was on September 6, 1940?

A. That is right.

Q. Referring to the question and answer which appears on page 324 of the transcript of that proceeding, will you tell me whether you recall this question being asked you, and [118] whether you recall giving this answer:

(Testimony of Bertram William Grothe.)

“Q. At what speed do you think it was traveling? Can you estimate the speed she was going?”

“A. I would estimate not over eight knots.”  
Do you recall that testimony at that time?

A. I don't recall having made that definite answer, no.

Mr. Adams: May it be stipulated, Mr. Cluff, that this testimony that I have read appears in the transcript of the A Board hearing?

Mr. Cluff: I will have to see the transcript. I will stipulate that what you read appears in the transcript.

Q. By Mr. Adams: I believe you testified that just immediately before the impact you went down below, and saw the actual impact from below, is that true?

A. That is as I remember, yes.

Q. Did you have a porthole down there, or do you have windows in your cabin?

A. No, windows in our cabin run the entire length of the cabin, both sides.

Q. Did you continue at that time to watch the “Sakito” and the barge, or did you go about some activity, such as starting the engine?

A. Well, I continued watching, as well as starting the engine. There was no necessity for my taking my attention away from the ships in order to start the engine.

Q. How long did you keep your eyes focused on the “Sakito” and the “Olympic”, beginning with

(Testimony of Bertram William Grothe.)

the time of the impact? [119] In other words, I would assume, while you were starting your engine, you certainly had to look at something to get it started?

A. No, sir, no more than you would have to to start your automobile. The way our boat was, we had an automobile engine, and the ignition switch and choke were on the dashboard, and you wouldn't have to pay any more attention to that than you would to your car.

Q. Did you get your engine started right away, without difficulty? A. Yes.

Q. As soon as you got your engine started, did you then devote your attention to the operation of the boat?

A. The engine was running some seconds before we got under way, because the anchor was being pulled.

Q. What did you do immediately after you got the engine started? A. I just waited.

Q. Did you keep your eyes focused on the "Sakito" and the "Olympic"? A. Yes. [120]

Q. When you took your eyes off those two vessels to devote your attention to operating the boat, where was the "Sakito" with reference to the "Olympic"? In other words, were they then together at that time?

A. To be frank with you, my memory is not as accurate on that, as to exactly when I looked away to turn the switch on; I couldn't tell you.

Q. I understood from your direct testimony, and



(Testimony of Bertram William Grothe.)

this is the purpose of my question, that after you saw the "Sakito" separate from the "Olympic" the first time, when she just separated, you did not continue to watch the "Sakito" or the "Olympic."

A. No, I didn't continue to watch the "Sakito". When I was conscious of the "Sakito" leaving the scene of the accident my attention, of course, was concentrated on the "Olympic" rather than on the "Sakito".

Q. Do you know, under those conditions, whether the movement of the "Sakito" in reverse was constant and continuous?

A. I know up to a certain point, up to the time she left the field of my attention, her movement was in reverse.

Q. About how far was her stem from the "Olympic" at that time?

A. Possibly half a ship's length.

Q. From that point on you have no knowledge concerning whether her movement astern was continuous or constant? [121]

A. Only by the deduction I made after I saw her anchor.

Q. When you saw her further back?

A. After she dropped her hook I noticed how far she was then.

Q. About how far was she when she eventually dropped her hook from the scene where the "Olympic" was, before she sank?

A. Possibly almost a half a mile, I imagine.

(Testimony of Bertram William Grothe.)

Q. What was the condition of the fog at that time, that is, as you were approaching the "Olympic" and the "Sakito" was backing away; was it as dense as at the time of the collision?

A. Let me impress you with the fact that we were a very short distance away, and the fog was not felt by us at all at that particular moment, because everything was in clear view, so far as that is concerned—the ships, barges, and all, were in clear view at that time. Whether the shoreline was visible, I don't know. I didn't look for it. But the ships were all visible.

The Court: There was quite a little excitement about that time, wasn't there?

A. Yes, there was a little activity.

Q. By Mr. Adams: How far through the water do you believe the stern of the "Olympic" moved after the impact until she came to rest?

A. Judging by the fact that at the moment of the impact we were directly astern of her, and at a later time when [122] the "Sakito" pulled away, her port was clearly visible to us, she probably swung through maybe two points. I don't know what, in terms of feet, or how great an arc she described.

Q. Do you have any recollection now where her stern was after her momentum stopped, from the position in which her stern was while you were still anchored behind her?

A. In feet?

Q. Yes; in other words, did she swing in an arc

(Testimony of Bertram William Grothe.)

of about 25 yards or 50 yards or 75 yards, or what? If you have any recollection on that?

A. I would say possibly 50 yards; in that neighborhood.

The Court: As I understand it, when you first saw the "Sakito", she came through the fog, and you saw this black mass about a half a mile away the first time you saw her.

A. I judge it was about a half a mile, yes.

Q. When she backed away, was she in fog, when she came to anchor?

A. The fog lifted very rapidly after that; as a matter of fact, I think the sun was beginning to break through, and there was visibility a few minutes after, some 15 minutes after the crash; it was improving continuously.

Q. By Mr. Adams: Is it correct, Mr. Grothe, that the bell on the "Olympic" was not sounded continuously until the "Sakito" was about one length away from the "Olympic"? That was your testimony on direct examination? [123]

A. Yes, that is right; that was my interpretation.

Mr. Adams: No further questions.

Mr. Velpmen: If your Honor please, as a point of information, I would like to know what the position of the libelants is as to this witness. This man has identified the body of Curtis Johnson; that the body was identified in his presence. Are we at liberty to go into that a little further at this time? It doesn't go to liability, but it goes to my case.

(Testimony of Bertram William Grothe.)

The Court: What feature of your case? We are only trying the question of liability. Your claim is a death claim.

Mr. Velpmen: That's right.

The Court: And the testimony here is that he recovered the body of a party whom you represent. What further can we develop in the way of your case at this time, outside of going into the question of liability?

Mr. Velpmen: As to the identity being a little more exact.

The Court: There is no dispute in this case as to this party having lost his life, is there, gentlemen?

Mr. Adams: I wouldn't say there is any dispute about it, if the court please. I don't intend to make any issue about it.

The Court: As I understood the situation, all sides have agreed that eight people lost their lives; possibly [124] nine?

Mr. Velpmen: No, seven; possibly eight.

Mr. Adams: That's right.

The Court: This isn't the possible eighth, is it?

Mr. Adams: That is correct.

The Court: What is the use of wasting the time of the court and everybody else, in trying to prove death, if you people all recognize that he died. For instance, his body was recovered, and there is no legitimate argument about it unless it is claimed that this was not his body.



(Testimony of Bertram William Grothe.)

Mr. Adams: No, only that I would like to have, if the court please, just a brief bit of evidence by someone as to identity. I don't intend to make an issue about it, but at the same time I am not in a position to know.

The Court: You never knew this man before, did you?

The Witness: No, I did not.

Mr. Black: Wouldn't it be more desirable to leave the identity of the decedents until later on, on damages, in this case?

The Court: That was what I assumed would be done.

Mr. Black: We are perfectly willing and content to leave that until a later time. If counsel desires to put on his proof at that time, we will have no objection to that.

The Court: This man can't identify this decedent except by what somebody else told him.

Mr. Velpmen: Only that he can identify the clothing.

The Court: Certainly you have someone who knew the [125] decedent in his lifetime, and can make a positive identification, and simplify the matter.

Mr. Velpmen: It was just a matter of caution on my part.

The Court: If we get technical on that, we will take care of the situation.

Mr. Adams: I don't intend to, if the court please, but I do want some evidence——

(Testimony of Bertram William Grothe.)

The Court: I understand the necessity of the proof of death, but I assumed that the parties all recognized that a certain number of people, and certain individuals, lost their lives, and you are not going to make an issue out of it; so that we won't have to go to any great length in establishing these facts. I assume that any body who knew the decedent in his lifetime could testify, but this witness did not know him. He recovered the body that he was told was Johnson. You may ask him if you want—what did you do with the body?

The Witness: We turned the body over to the Coast Guard vessel. Mr. Johnson came aboard our boat.

Mr. Black: May it be understood, Mr. Adams and Mr. Cluff, that proof of identification of the decedents may be reserved until a later hearing on damages?

Mr. Cluff: So stipulated, so far as Hermosa is concerned.

Mr. Adams: It is agreeable to me, if the court please.

Mr. Velpmen: That stipulation does not cover the question as to the cause of death. I don't know whether Mr. [126] Adams is going to bring out any evidence on that.

The Court: What difference would that make?

Mr. Velpmen: It might be that while they were pulling him out of the water, they might claim that the decedent got on another boat, and did something

(Testimony of Bertram William Grothe.)

that caused his own death trying to get from the "Sakito Maru" to another boat. There is that possibility.

The Court: Don't get too nervous about these things, because the court is going to see that substantial justice is done here, and the court is going to have control of this case until final judgment.

Mr. Velpmen: Very well, your Honor.

### Cross-Examination

Q. By Mr. Black: On the matter of the visibility, Mr. Grothe, at the time you first saw the approaching "Sakito Maru", did I understand your testimony that you believed the visibility, so far as you were concerned, was about a half a mile at that time? A. That's right.

Q. How far would the "Sakito Maru" in your judgment be from the barge at the moment you first saw the "Sakito Maru"?

A. The distance would be very nearly the same, inasmuch as we were roughly in an isosceles triangle—three boats, ours, the "Olympic" and the "Sakito", were in an isosceles [127] triangle, with our boat forming the base, so the distance would be very nearly the same, I would say.

Q. If I understood you correctly, you heard a three blast signal from the "Sakito Maru" very shortly before the collision?

A. You might say at the time of the collision.

Q. That was the first signal, other than the fog signal, that you heard from the Japanese vessel?

(Testimony of Bertram William Grothe.)

A. That's right.

Mr. Adams: Those are all the questions.

### Redirect Examination

Q. By Mr. Cluff: When you saw the "Sakito Maru" the first time, about half a mile from you, and evidently about a half a mile from the "Olympic", could you give us an estimate of how much time elapsed from that time up to the collision?

A. Possibly four or five minutes.

Q. Four or five minutes?

A. Yes.

Q. Of that four or five minutes—

The Court: It took her four or five minutes to go a half a mile? A. Yes.

Q. By Mr. Cluff: Of that four or five minutes, how much would you say elapsed before the "Sakito Maru" took [128] her turn to starboard?

A. Well, she probably—let me answer this way: She probably—she gave a swing into starboard within a matter of less than a minute, at the time of the impact.

Q. Less than a minute at the time of the impact?

A. Of the time of the impact.

Q. So that her approach, before that swing to starboard, occupied the great majority of the time she was within your vision? A. Yes.

Q. At the time she made the swing, I think you said she was two or two and a half lengths, of her own length, from the "Olympic"?



(Testimony of Bertram William Grothe.)

A. At the time she made the swing to starboard, yes.

Q. Then I think you also testified that she was about a length away when the bell started to ring continuously on the "Olympic", and that was about 15 seconds before the impact? A. Yes.

Q. I wonder if you would consider, Mr. Grothe, that if a vessel made her length of 500 feet in 15 seconds, she was going 2,000 feet a minute, or 20 knots an hour? I wonder if you, in the light of that suggestion, want to reconsider that 15-second estimate?

Mr. Adams: I object upon the ground that it is an attempt to impeach his own witness. [129]

Mr. Cluff: I am surprised at the witness's statement.

The Court: You have a right to ask the witness to explain his testimony, if he has any explanation to make.

A. You say in the light of my statement that the bell rang continuously for 15 seconds, while the boat apparently traveled 500 feet, she would be going 20 knots an hour?

Mr. Cluff: Possibly I misunderstood you, but as I compute roughly, if she was a ship's length away, or her own length away from the barge, at the time the bell started ringing rapidly and continuously, if it rang continuously up to the time of the collision, and the interval was 15 seconds, it follows, doesn't it, that the ship moved a distance of 500

(Testimony of Bertram William Grothe.)

feet through the water in 15 seconds?

A. It follows, if you assume my judgment is infallible.

Q. Then, if you take 500 feet in 15 seconds, or 2,000 feet a minute, by rough computation, that is 20 knots an hour?

A. That doesn't sound very good.

Q. I wonder if you wouldn't like to overhaul this estimate a little bit?

A. In explanation, possibly my 15-minute is a great deal longer——

Q. 15-second estimate, you mean?

A. And my ship's length may be shorter; that is, there may be, instead of 550, there may be 500 feet, and the length of time may be 10 seconds, rather than 15.

Mr. Adams: If the court please—— [130]

The Court: I think as a matter of fairness these terms of distance are your estimates?

A. To the best of my judgment.

Q. To the best of your judgment, but, as you said before, you may be off on these seconds?

A. That's true; they are estimates, I will admit; I did not have a stop watch.

Mr. Cluff: You have been, you say, and are more or less familiar, as you say, with the speed of a vessel, and in forming an estimate, whether right or wrong, of that speed, you have given us your best recollection, your best estimates?

A. That's right.

(Testimony of Bertram William Grothe.)

Q. By the Court: How long was the boat in traveling a half a mile, from the time it first came into your vision until the time of the collision?

A. Possibly four minutes.

The Court: That would make it traveling a mile every eight minutes?

A. A mile every eight minutes, yes.

Mr. Cluff: That would be, roughly,  $7\frac{1}{2}$  knots?

A. A knot being a little greater than a mile.

Q. 6080 feet to the knot, is generally figured 6 knots to the mile.

The Court: I am thankful you haven't got down to speaking of meters yet. Are there any further questions [131] of this witness, gentlemen?

Mr. Cluff: I haven't quite finished.

Q. You spoke of distinctive signals of the bells of the three barges. Are you able to state what those distinctive signals were?

A. The main action of the bell was identical in all three barges; in other words, the approximate length of time that the bell rang continuously was done in the same style, if you get what I mean.

Q. That is, the regular conventional 5-seconds peal?

A. That's right, but at the end of the 5-seconds continuous ringing—I may be mistaken as to the identity of these, but the "Rainbow" gave one clang; the "Olympic" two, and the "Point Loma" none. It may be the other way around; it may be that the "Loma" gave two, but there was a distinctive quality in each ring of the three barges.

(Testimony of Bertram William Grothe.)

Q. There was either no supplemental ring, or a supplemental ring from one barge, and two supplemental rings from the other?

A. That is what I am trying to say, yes.

Mr. Cluff: I think that is all.

#### Recross Examination

Q. By Mr. Adams: Did you notice, after you came to anchor there, and the fog set in, that the fog lay in a layer or strata, and that the area between the water, and so many feet above the surface of the water was less dense [132] than the atmosphere above that particular stratification?

A. No, I can't say that I noticed any such condition.

Mr. Adams: No further questions.

(Short recess.)